



An Coimisinéir Faisnéise  
Information Commissioner



Coimisinéir um Fhaisnéis Comhshaoil  
Commissioner for Environmental Information

# Annual Report 2018

Supporting  
the Right to  
Information



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An Coimisinéir Faisnéise  
Information Commissioner

Annual Report 2018

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## Foreword

I hereby submit my sixth Annual Report as Information Commissioner to the Dáil and Seanad pursuant to section 47(2) of the Freedom of Information Act 2014.

This is the twenty-first Annual Report of the Information Commissioner since the establishment of the Office in 1998.

A handwritten signature in black ink, which appears to read 'Peter Tyndall'.

**Peter Tyndall**  
Information Commissioner  
July 2019



**Jacqui McCrum**  
Director General  
October 2015 to December 2018



# Performance Summary



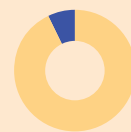


## Our performance



**64%**

We closed 64% of all reviews within four months - an all-time high



**90%**

At year end, 90% of reviews on hand were less than six months old

## Demand for our services



OCEI closed more cases in the year than in any other year since its inception



**113**

We had 113 cases on hand at year end; the lowest number in recent years



**431**

We accepted 431 applications for review in 2018



**113**

In 2018 we accepted applications for review concerning 113 public bodies



**99%**

99% of all applications were accepted by my Office within ten days



# Chapter 1

## The year in review



## Chapter 1: The year in review

### Your right to information

#### Freedom of Information

The **FOI Act 2014** provides for a general right of access to records held by public bodies and also provides that records should be released unless they are found to be exempt. The Act gives people the right to have personal information about them held by public bodies corrected or updated and gives people the right to be given reasons for decisions taken by public bodies, where those decisions expressly affect them.

The primary role of the Office of the Information Commissioner is to conduct independent reviews of decisions made by public bodies on FOI requests, where members of the public are dissatisfied with responses to those requests. As Information Commissioner, I have a further role in reviewing and publishing commentaries on the practical operation of the Act.

The FOI Act applies to all bodies that conform to the definition of public body in Section 6(1) of the Act (unless they are specifically exempt or partially exempt under the provisions of Section 42 or Schedule 1 of the Act). Bodies such as Government Departments and Offices, local authorities, the Health Service Executive, voluntary hospitals, and universities are included. As new public bodies are established, they will automatically be subject to FOI unless they are specifically exempt by order made by the Minister.

.....  
From an applicant

*“Thank you for all your help and patience. You made a difficult situation clear and easy to understand. I wish you all the best of luck in the future.”*  
.....



## Access to Information on the Environment (AIE)

The European Communities (Access to Information on the Environment) Regulations 2007 to 2014 provide an additional means of access for people who want environmental information. The right of access under the **AIE Regulations** applies to environmental information held by or for a public authority. The primary role of the Commissioner for Environmental Information is to review decisions taken by public authorities on requests for environmental information. Both access regimes are legally independent of each other, as are my roles of Information Commissioner and Commissioner for Environmental Information.

## Re-use of public sector information

The European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015 (**S.I. No. 525 of 2015**) provide that the Information Commissioner is designated as the Appeal Commissioner. As such, my Office can review decisions taken by public bodies in relation to requests made under the Regulations to re-use public sector information, including decisions on fees and conditions imposed on re-use of such information.

## Introduction

In my 2017 Annual Report, I reported on a remarkable increase in the number of reviews completed which was almost double the number that were completed in the year I first took up Office. While the number of reviews we accepted in 2018 fell by more than 13% and our review completion rate fell by almost 12%, these statistics belie the significant amount of work we undertook against a very challenging background.

It is noteworthy that we completed more reviews than were accepted during the year, thereby reducing the number of cases on hand at year end, and that we continued to have great success in completing cases as early as possible. In 2018 we completed 64% of all reviews within four months, which is an all-time high. As Environmental Commissioner, I am pleased to report that my Office closed more cases in the year than in any other year since its inception. These cases tend to be quite complex and often require an analysis and application of complex European Court of Justice jurisprudence.

What the statistics do not show is the tremendous amount of resources we had to devote to the management of superior court appeals during the year, both in the OIC and in the OCEI. We experienced a high level of litigation during the year, although it is very difficult to say why there has been such a marked increase. Indeed, by year end, we were managing 20 cases before the various Courts. Each case takes a significant amount of time to manage and requires the diversion of resources from day-to-day casework. Later in this Report, I give more detail of our court activity.

Apart from our day-to-day casework, my Office commenced or completed a number of other important projects in 2018. One of the key initiatives we introduced during the year was the development of a comprehensive outreach programme. The primary purpose of the programme is to enhance the level and nature of our engagements with bodies within remit with a view to improving the administration of FOI. I see this as a very important measure in allowing my Office to support public bodies in the effective administration of FOI and in allowing my Office to seek mechanisms for identifying and addressing systemic issues arising. Roll-out of the programme began in late 2018 and the delivery of the programme will intensify during 2019.

2018 saw the introduction of the GDPR. Under section 60 of the Data Protection Act 2018, certain obligations on my Office and certain rights of data subjects are restricted, to the extent that the personal data we hold is kept for the performance of my functions. Nevertheless, we expended considerable time and resources in ensuring that we were GDPR ready.

In April 2018, I hosted a conference to mark the 20th anniversary of the introduction of freedom of information legislation in Ireland. The conference reflected on the impact of FOI in Ireland and its contribution to reform of the public service.

We also continued our extensive preparations for the roll-out of a new case management system in 2019. The new system will facilitate the digitisation of services and the automation of routine tasks that will support the delivery of a more effective and efficient service.

Finally, as we are due to move Office in 2019, I am happy to report that having worked closely with the Office of Public Works in the latter half of 2018, we have managed to secure new accommodation in a central location which will allow us to remain readily accessible to all of our stakeholders.

### **Peter Tyndall**

Information Commissioner

Commissioner for Environmental Information

.....  
**From an applicant**

***"I wish to express my gratitude for your assistance in following up this situation. You can be assured it is greatly appreciated. I've no doubt but for your intervention there wouldn't be any response whatsoever ... in the matter. Again, thank you for your assistance."***

.....



## Office developments in 2018

### Progress on ICT systems

I am committed to ensuring that my Office successfully harnesses new technologies to deliver better customer service and knowledge management. Over the past number of years, we implemented an extensive ICT renewal and improvement plan. In 2018 we progressed the final key element of this plan – delivery of a modern case management system. The new system will go live in 2019 and will support the delivery of a more effective and efficient service to all our stakeholders.

The new website delivered in 2017 as part of our ICT renewal plan is secure, reliable and easy to use. The site has proven to be a useful resource for both FOI requesters and decision makers. The website includes an online portal offering a fast and efficient facility to submit applications for review online. We will continue to engage with our stakeholders to ensure that our online facilities meet their needs. In 2019 we will further enhance the online portal facility for OIC applicants.

### Conference to mark 20 years of Freedom of Information legislation in Ireland

April 2018 marked 20 years of the Office of the Information Commissioner and the Freedom of Information Act in Ireland. At a conference to mark the occasion European Ombudsman Emily O'Reilly reflected on her 10 years as Irish Information Commissioner and the challenges she faced including the impact of the imposition of fees for FOI requests in 2003. Former Minister of State Eithne Fitzgerald, who introduced the Freedom of Information Bill in 1997, gave a unique insight into the development of the legislation, while RTÉ Investigations journalist Conor Ryan gave his perspective on using the FOI Act.

The rights established under the FOI Act should not be taken for granted. With the passing of the Act the public had, for the first time, a right to access information held about them and about decisions that affect their everyday lives. The Act has enabled a light to be shone on many areas of public life over the last 20 years and has helped move government from a culture of secrecy to one where open and transparent decision-making is now expected.

### Our commitment to equality and human rights

The Irish Human Rights and Equality Commission Act 2014 introduces a positive duty on public bodies to have due regard to human rights and equality issues. My Office has adopted a proactive approach to implementing this duty.

In 2018, we established a staff working group on the public sector duty. The group held workshops on human rights and equality and met with the Irish Human Rights and Equality Commission. It then assessed what human rights and equality issues are relevant to our functions and identified the policies, plans and actions in place to address those issues. We now have a committee in place to oversee implementation of the duty. Its mission is: "Creating an accessible and inclusive space for everybody who uses, or works in, our offices". I am keen to ensure that this duty becomes an integral part of how my Office works.

My Office is committed to providing a service to all clients that respects their human rights and their right to equal treatment. This is equally applicable to how we interact with our own staff as it is essential in fostering a healthy work environment that promotes engagement, openness and dignity in the workplace. Our approach is underlined by our core organisational values of independence, customer focus and fairness, which are evident in both the culture of our Office and our internal policies and procedures. We have also been proactive in providing training to our staff on human rights and equality.

## Statutory notices issued to public bodies

### Notices issued under Section 23 of the FOI Act

Where a public body decides to refuse a request, whether wholly or partly, it is obliged to give the requester a statement of the reasons for the refusal. It is not sufficient for the body to simply paraphrase the words of the particular exemptions relied upon. The decision should show a connection, supported by a chain of reasoning, between the decision and the decision maker's findings. It should generally include

- any provisions of the FOI Act pursuant to which the request is refused,
- the findings on any material issues relevant to the decision, and
- particulars of any matter relating to the public interest taken into consideration for the purposes of the decision.

Where my Office considers that the statement of reasons given is inadequate, I am obliged, under **section 23**, to direct the head of the body to provide a statement containing any further information in relation to the above matters that is in the power or control of the head.

In 2018, we issued notices under section 23 to the heads of the following public bodies:

- Department of Business, Enterprise and Innovation
- Department of Employment Affairs and Social Protection
- Department of Justice and Equality
- HSE
- Cork City Council
- Dublin City Council
- Dún Laoghaire-Rathdown County Council
- Defence Forces Ireland

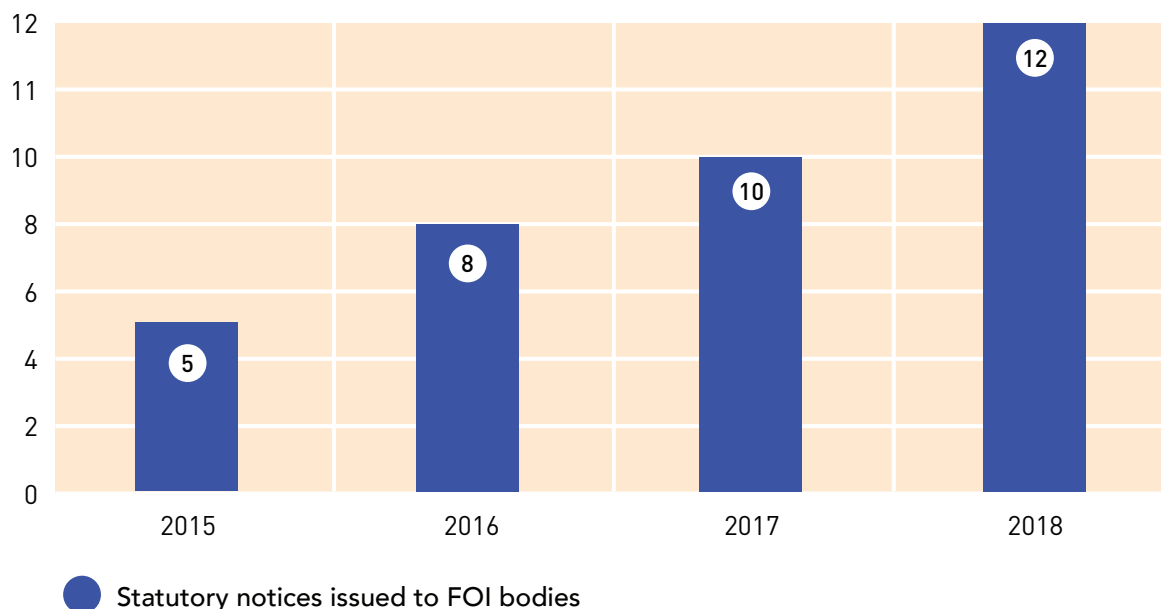
In each case, we considered that the original and/or internal review decisions fell short of the requirements of the FOI Act, and we sought a more detailed statement from the public body.

## Notices issued under section 45 of the FOI Act

Under **section 45**, I can require a public body to provide me with any information in its possession or control that I deem to be relevant for the purposes of a review. It is important that public bodies comply with the time frames set out by my Office, as delays impact on our ability to comply with the requirement that we issue decisions as soon as may be and, in so far as practicable, within four months of receipt of applications for review.

The vast majority of requests my Office makes for information relating to reviews are responded to within the time frames specified in such requests. However, I occasionally have to formally invoke my statutory powers under section 45 to elicit a response.

In 2018 my Office issued 12 notices under section 45.



[My 2017 Annual Report erroneously recorded 5 section 45 notices as having issued in that year. The true number was 10].

Five notices were issued to the Health Service Executive and one notice each to

- TUSLA: Child and Family Agency
- Mater Misericordiae Hospital Limited
- Galway County Council
- Defence Forces Ireland
- Kildare and Wicklow Education and Training Board
- Quality and Qualifications Ireland and
- National Ambulance Service

I have provided details on a sample of cases below. In the majority of the cases where my Office issued a notice under section 45 during the year, the matter was resolved within the deadline set in the notice letter.

A number of notices I was compelled to issue this year were as a result of FOI bodies failing to provide sufficient details on the adequacy of searches undertaken to locate the records sought. While a body may refuse a request where the records sought cannot be found, it can do so only after it has taken all reasonable steps to ascertain the whereabouts of the records. In such cases, my review is concerned with whether the body has, indeed, taken all reasonable steps.

In a number of other reviews, notices were issued because the body failed to provide this Office with the main records the subject of the review, within the time requested.

It is important to note I generally reserve notices under section 45 for cases in which my Office simply cannot progress a case without the requested information from the body.

### **HSE South area**

On 21 March 2018, my Office sought details of the searches undertaken by the HSE to locate the records sought by the applicant. The HSE's response was due by 6 April 2018 but an extension was granted until 20 April 2018. Subsequent phone calls were made to the HSE and further requests were sent by email, following which a new deadline of 4 May was set by my Office. However, a satisfactory response was not received and on 25 May my Office issued a notice under section 45 to the Acting Director General of the HSE. A response was received by the deadline stated in the notice.

### **HSE West area**

A similar situation to the one above arose concerning the HSE West area. My Office again requested details of the searches undertaken by the HSE and a response was requested by 6 September 2018. At the HSE's request the deadline was extended to 20 September. However, by 17 October, almost two months after an initial request was made, no response was received. My Office issued a notice under section 45 to the Director General requesting a response within ten working days.

While the HSE acknowledged the notice letter, a response was not received by the deadline. My Office then took the unusual step of writing again to the Director General. On 14 November 2018 my Office received a reply from the HSE.

### **Quality and Qualifications Ireland (QQI)**

In a decision issued in February 2018, my Office annulled a decision of QQI to refuse access to records under section 15(1)(a) of the Act on the ground that the records sought did not exist or could not be found and directed it to make a fresh decision on the applicant's request. In its new decision, issued in August 2018, QQI refused access to the records on the ground that the request, originally made by the applicant in July 2017, was frivolous or vexatious.

However, during the review by my Office of that new decision, QQI stated it wished to again rely on section 15(1)(a) to refuse the applicant's request for further records.

In September 2018, my staff met with QQI to discuss the review. Subsequent to that meeting, my Office wrote to QQI on 15 October 2018 seeking details of the searches undertaken to locate all relevant records and specifically outlined those parts of the applicant's request that

needed to be addressed. While QQI issued a response, it failed to address any of the queries raised by my Office. QQI subsequently issued a further response and gave brief search details but failed to give the full search details as requested.

On 6 November 2018, my Office issued a notice under section 45 to the Chief Executive Officer of QQI. The notice stated that my Office had not received the requested information and that it was not possible for the review to proceed in the absence of that information being provided. The notice asked QQI to forward the relevant information by 13 November. A reply was received by my Office on 15 November 2018. However, my Office contacted QQI again, as the response of 15 November was considered to be insufficient in order to progress the review. At the time of writing my review was ongoing.

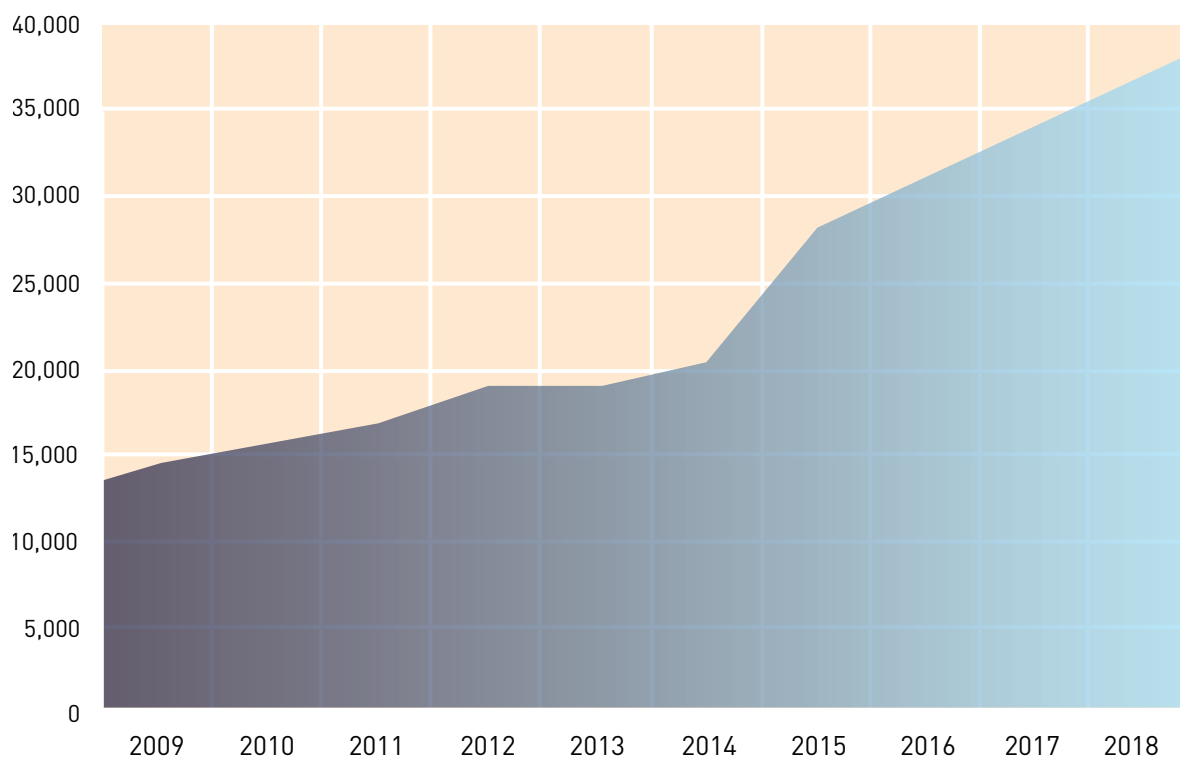
## Key FOI statistics for the year

This part of Chapter 1 provides more detail on FOI usage during the year under review. Further information is provided in the tables in Chapter 4.

My Office received statistical returns on behalf of just over 280 public bodies for 2018. I appreciate the scale of the task involved for those lead agencies who collect the information on FOI activity for the year under review. I am grateful to the agencies for their timely response to the request from this Office for the information used in this Annual Report.

I note that a considerable number of bodies which are subject to the FOI Act appear either to have no FOI activity in the year under review, or have never received an FOI request.

### Number of FOI requests to public bodies 2009 – 2018





Public bodies received a total of 36,896 requests in 2018, an increase of 8.5% on 2017.

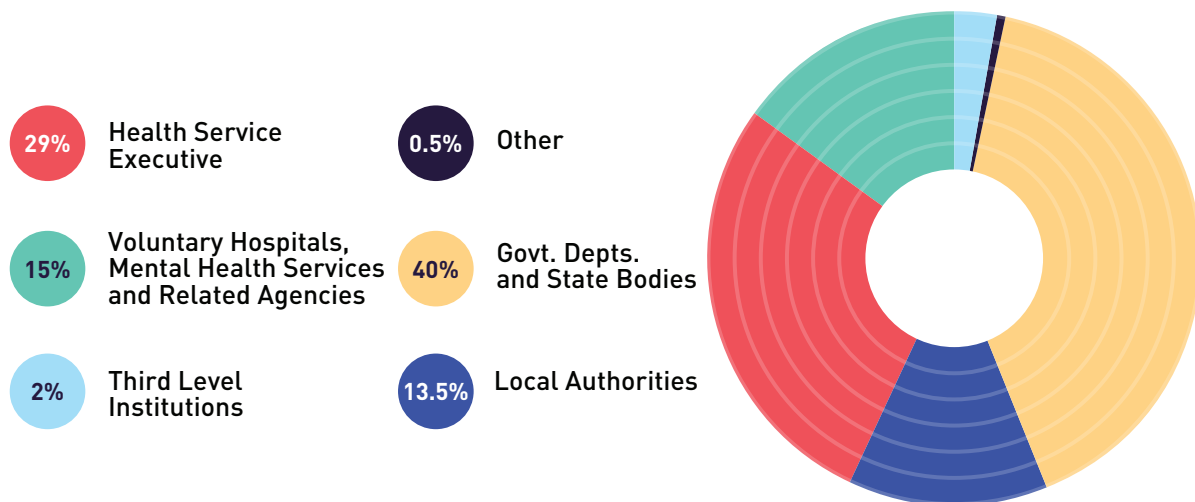
Since 2015, the first full year following the introduction of the FOI Act 2014 and the extension of FOI to a range of new bodies, the total number of requests received annually by public bodies has increased by 32%.

In my 2017 Annual Report, I reported that the total number of requests carried forward to 2018 was 7,182, as notified. However, it seems that some bodies subsequently amended their carry forward figures. Consequently, in the return for 2018 the total number of requests carried forward to 2018 is stated as 6,132. The number of requests carried forward to 2019 has been reported as 7,365.

### Top ten bodies who received most requests during 2018

Placing	Public body	2018
1	Health Service Executive	10,706
	HSE South area	3,823
	HSE West area	3,731
	HSE Dublin North East area	1,365
	HSE Dublin Mid-Leinster area	1,148
	HSE National	639
2	Department of Employment Affairs and Social Protection	2,510
3	TUSLA - Child and Family Agency	992
4	St James's Hospital	945
5	Department of Justice and Equality	827
6	Tallaght Hospital	803
7	Dublin City Council	774
8	Department of Education and Skills	568
9	Department of Agriculture, Food and the Marine	535
10	An Garda Síochána	497

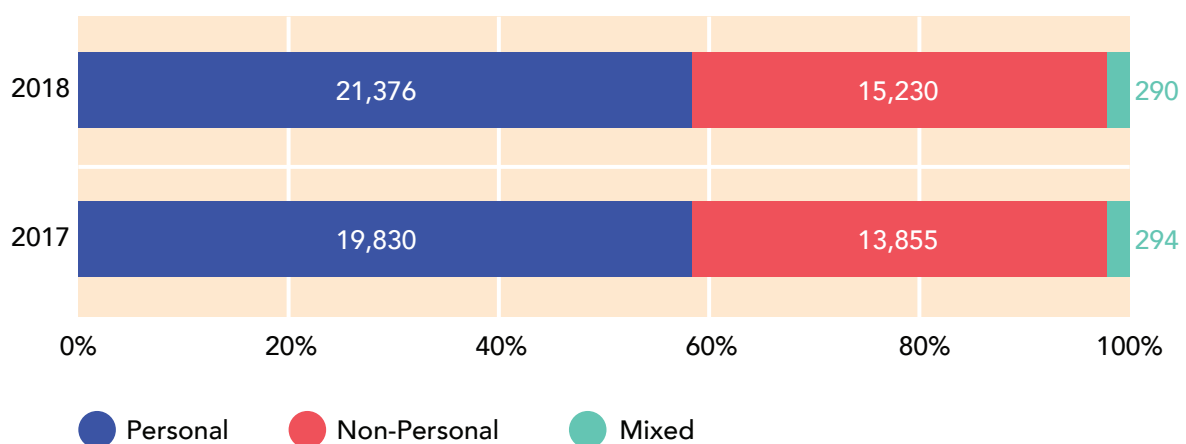
## Sectoral breakdown of FOI requests to public bodies



- The Department of Communications, Climate Action and Environment recorded an 86% increase, from 195 requests received in 2017 to 362 in 2018.
- The Department of Rural and Community Development reported an increase in requests received from 14 in 2017 to 58 in 2018.
- Requests to the Department of Public Expenditure and Reform decreased in 2018 by 17%, from 248 received in 2017 to 207 in 2018. Requests to the Department have decreased by 41% since 2016.
- Carlow County Council recorded the largest percentage increase (42%) among local authorities in 2018. The Council received 84 requests, up from 59 in 2017.
- Cavan, Donegal and Kilkenny County Councils each recorded an increase of just above 30% over their 2017 returns.
- Dublin City Council, the recipient of the largest number of FOI requests to any local authority in the year, recorded an increase of 17% over the figure for 2017.
- Seven local authorities recorded reductions in requests received in the year.
- The Social Welfare Appeals Office recorded a decrease of 22% in requests received during the year. This means that in two years requests to the Office have declined by 44%, from 248 in 2016 to 139 in 2018.
- Requests to the Strategic Banking Corporation rose from 16 requests received in 2017 to 78 in 2018.
- Inland Fisheries Ireland saw an increase in requests received from 34 in 2017 to 93 in 2018.
- The State Examinations Commission received 41 requests in 2017, compared to 97 in 2018.
- An Bord Pleanála recorded an increase in requests received from 34 in 2017 to 63 in 2018.
- The National Transport Authority recorded an increase in requests received from 88 in 2017 to 157 in 2018.

- The Public Appointments Service recorded 102 requests received in 2018. A figure for 2017 is not available.
- Three Health Service Executive areas recorded increases in requests received in 2018. The HSE South area reported an increase of 11% while the HSE West area reported an increase of 17%. The largest percentage increase, of 25%, was reported by the HSE North East area.
- The Voluntary Hospital sector, as a whole, recorded an increase of 15% in requests received during the year.
- Requests to Mercy Hospital Cork increased by 39%, from 67 received in 2017 to 93 in 2018.

### Type of request to public bodies



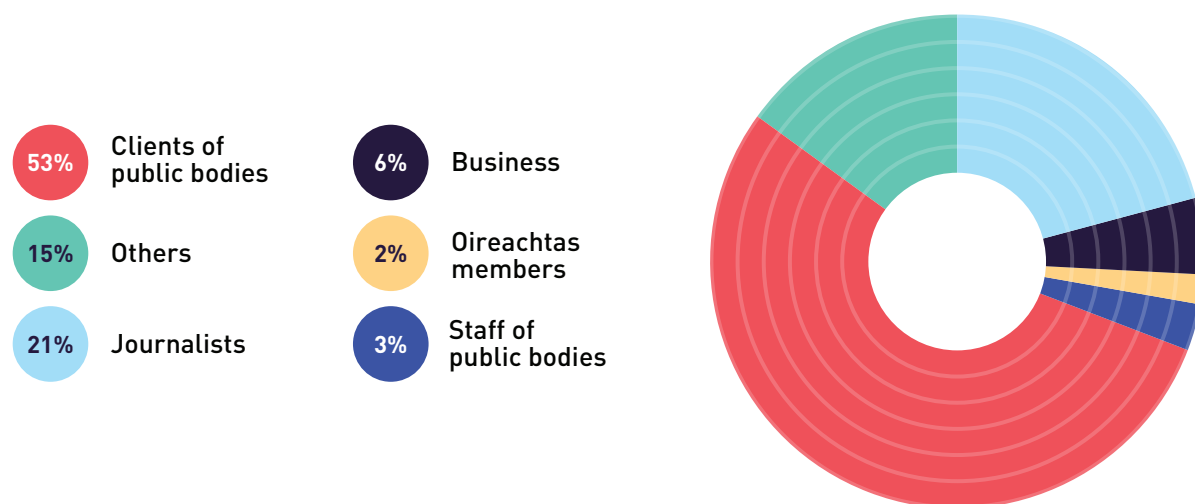
While 41% of overall requests received in 2018 were for access to non-personal records, the rate rose to 81% in the case of local authorities, the same rate as in 2017.

64% of all requests made during the year to Government Departments and State bodies were for access to non-personal information. This is up from 56% in 2017.

The HSE received requests for access to personal information in 88% of cases. Overall the health sector, including the HSE and voluntary hospitals received requests for personal information in 90% of cases.

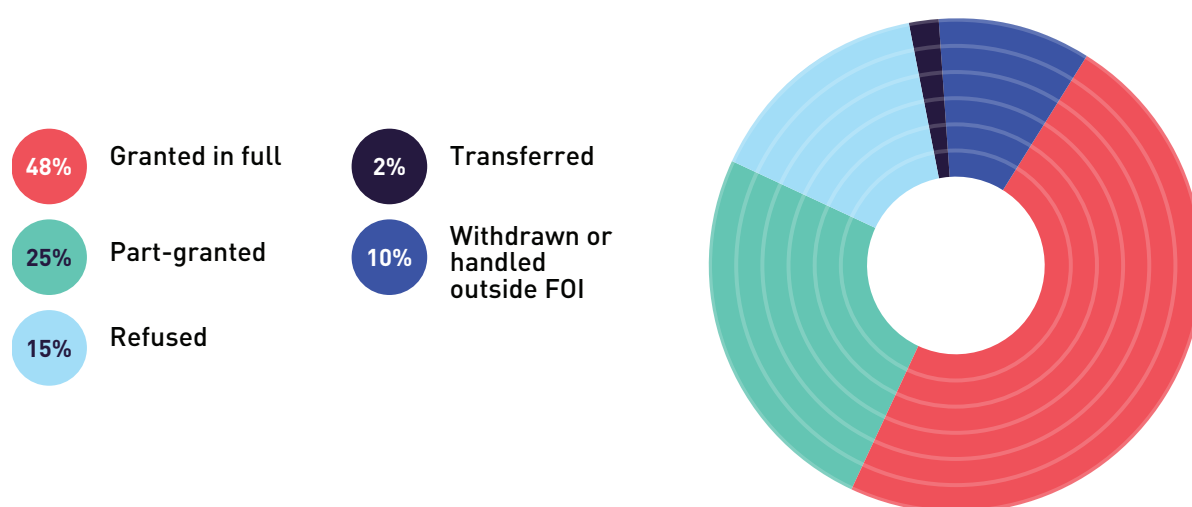
See Chapter 4, tables 6-11, for more details.

## Category of requester to public bodies



The percentage rates of the various categories of requester have remained fairly static over the past three years.

## Release rates by public bodies

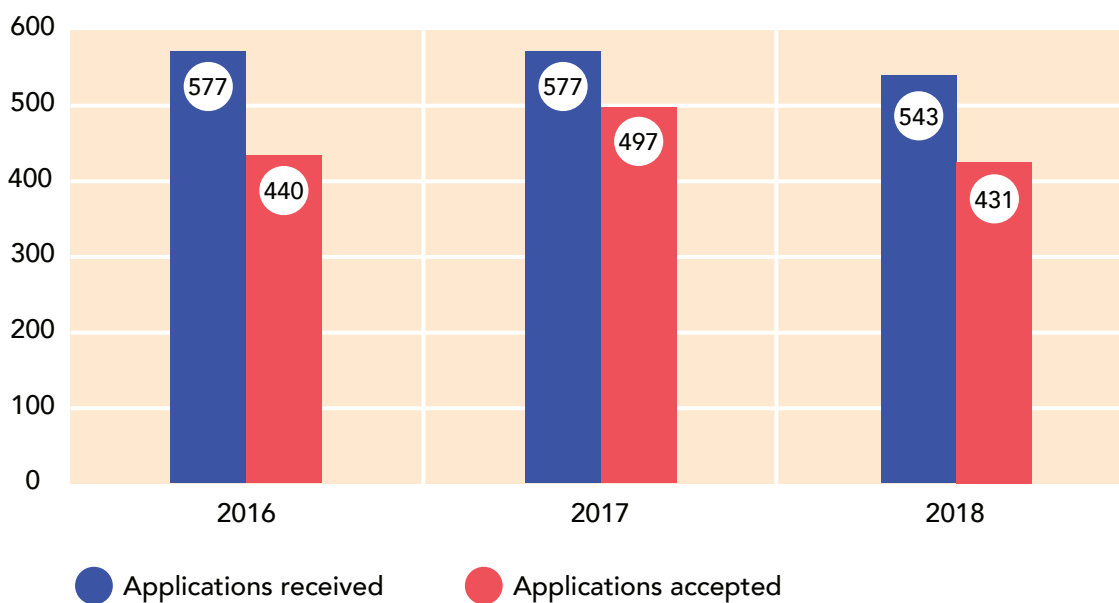


2018 saw a slight reduction in the percentage of requests granted in full (51% in 2016 and 2017). Table 5 in Chapter 4 provides more detail on release rates by sector. Most bodies recorded little or no change in the percentage of cases where the request was refused. However, the overall refusal rate for third-level institutions has increased from 10% in 2017 to 15% in 2018.

## Office of the Information Commissioner caseload

An application for review can be made to my Office by a requester who is not satisfied with a decision of a public body on an FOI request. Decisions made by my Office following a review are legally binding and can be appealed to the High Court only on a point of law.

### Applications to OIC 2016 – 2018

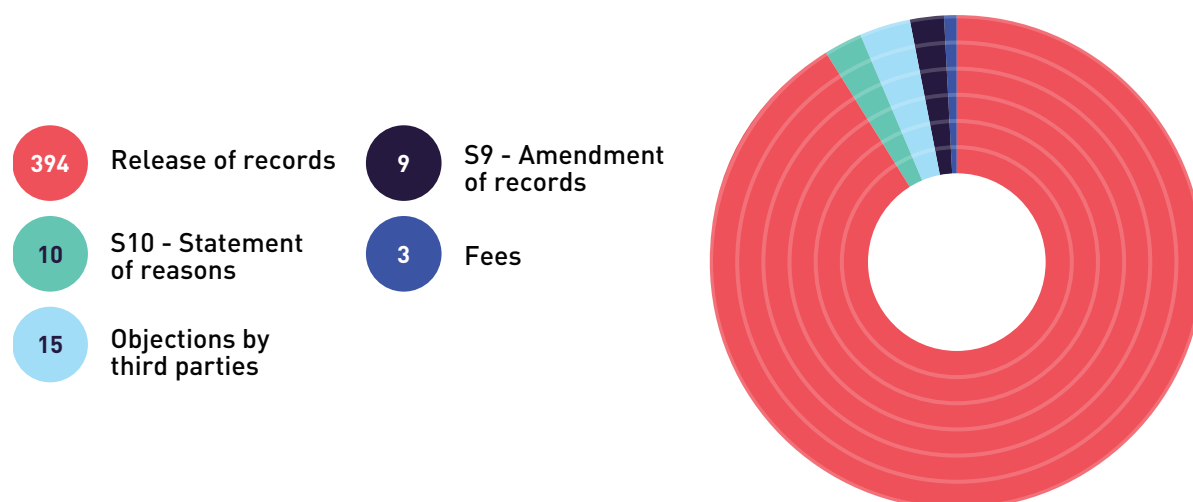


One of the key objectives of my Office is to validate and accept all applications for review within ten working days. I am pleased to report that 99% of all applications accepted in 2018 were accepted within that time frame.

There are various reasons why the number of applications for review accepted falls short of the overall number received, the primary reason being that some applications are made prematurely, i.e. the applicant did not apply for an internal review of an original decision of an FOI body before approaching my Office. I intend to examine such cases in the future with a view to identifying trends and to see if my Office might be in a position to take action to reduce the number of applications which must be rejected.

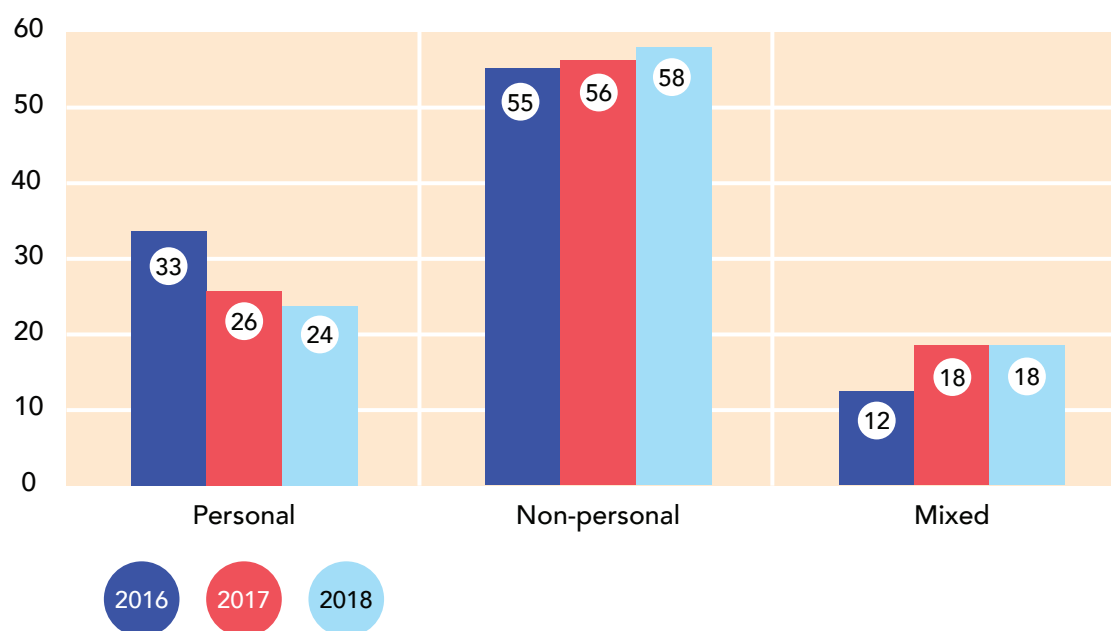


## Subject matter of review applications accepted by OIC



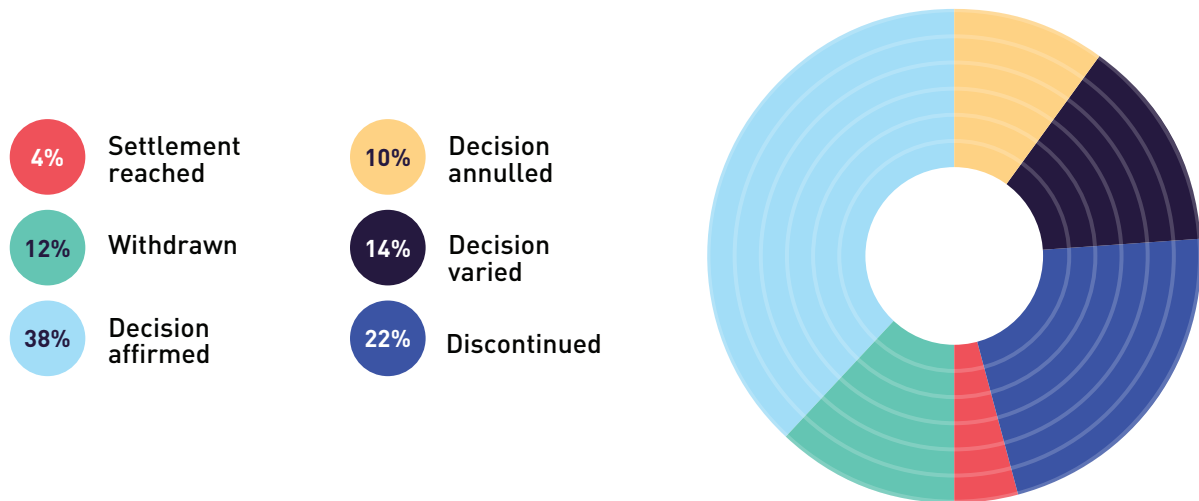
## Percentage of applications accepted by OIC by type 2016 – 2018

An application recorded by 'type' indicates whether the applicant is seeking access to records which are of a personal or non-personal nature, or a mix of both.

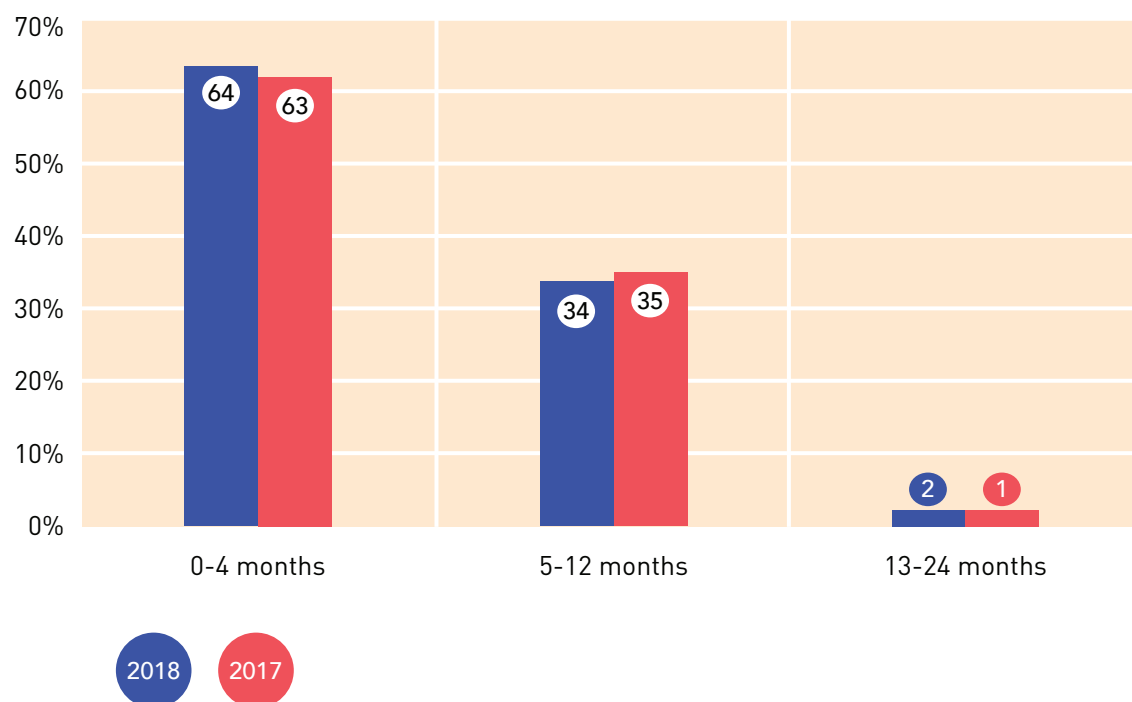


## Outcome of reviews by OIC in 2018

My Office reviewed 443 decisions of public bodies in 2018. In 62% of cases, the review was brought to a close by way of binding decision. In 38% of those cases, my Office affirmed the decision of the FOI Body. These rates are almost identical to the average percentage rates for the past four years.



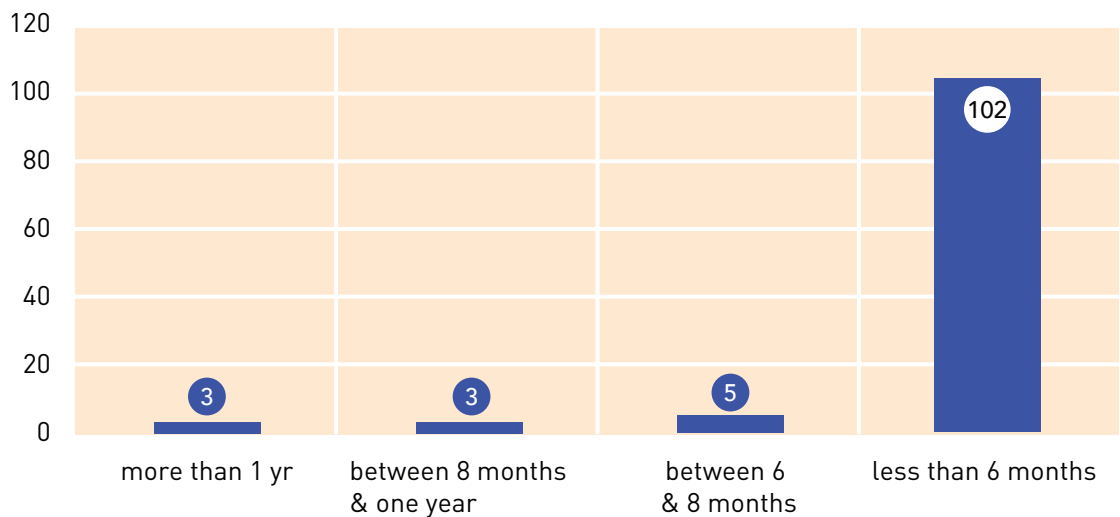
## Age profile of cases closed by OIC



I am pleased to report that 64% of reviews completed in 2018 were closed within four months, which represents an all-time high for my Office.

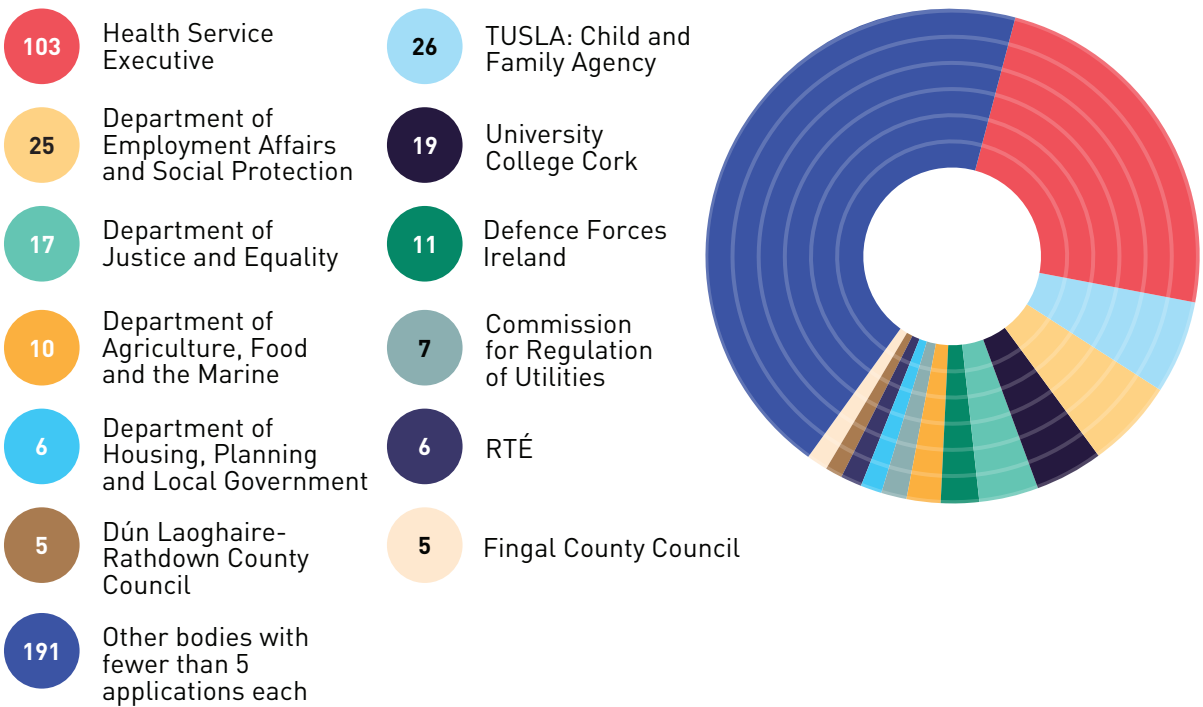
Age profile of cases on hand in OIC at end 2018

At the end of 2018, we had 113 cases on hand, the lowest number we have had in recent years. 90% of all reviews on hand were less than six months old.

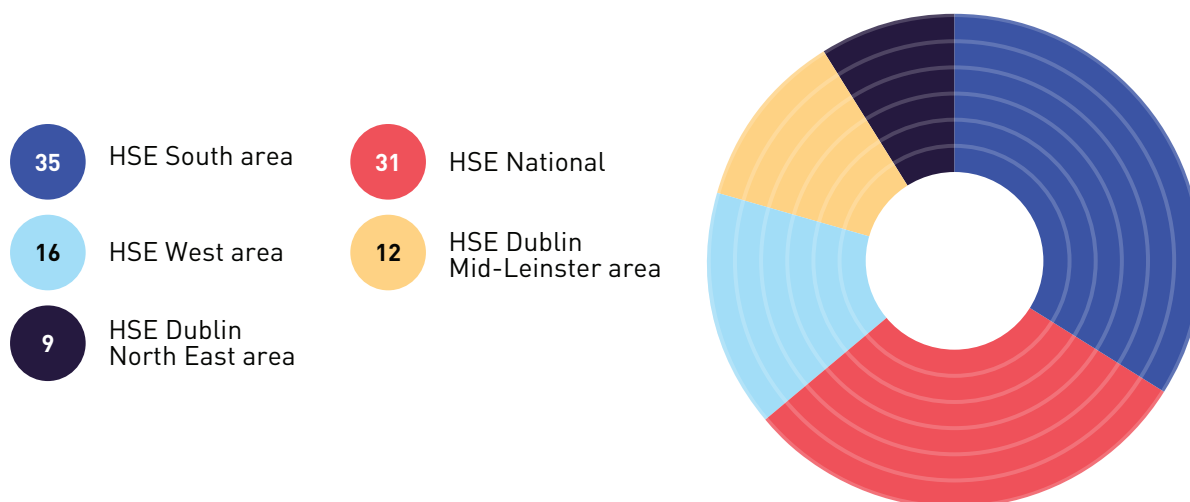


Breakdown by public body of applications for review accepted by OIC

In 2018, my Office accepted applications for review in respect of 113 public bodies. Coincidentally, this is the same number as last year.



## Breakdown of HSE cases accepted by OIC



## Deemed refusals

The FOI Act imposes statutory time limits on public bodies for processing FOI requests. Specifically, a decision on a request should issue to the requester within four weeks and a decision on a request for an internal review should issue within three weeks.

Where a public body fails to issue a timely decision either on the original request (first stage) or on internal review (second stage) as provided for at sections 13 and 21 of the Act respectively, the requester is entitled to treat the body's failure as a 'deemed refusal' of the request. Following a deemed refusal at the internal review stage, a requester is entitled to apply to my Office for a review.

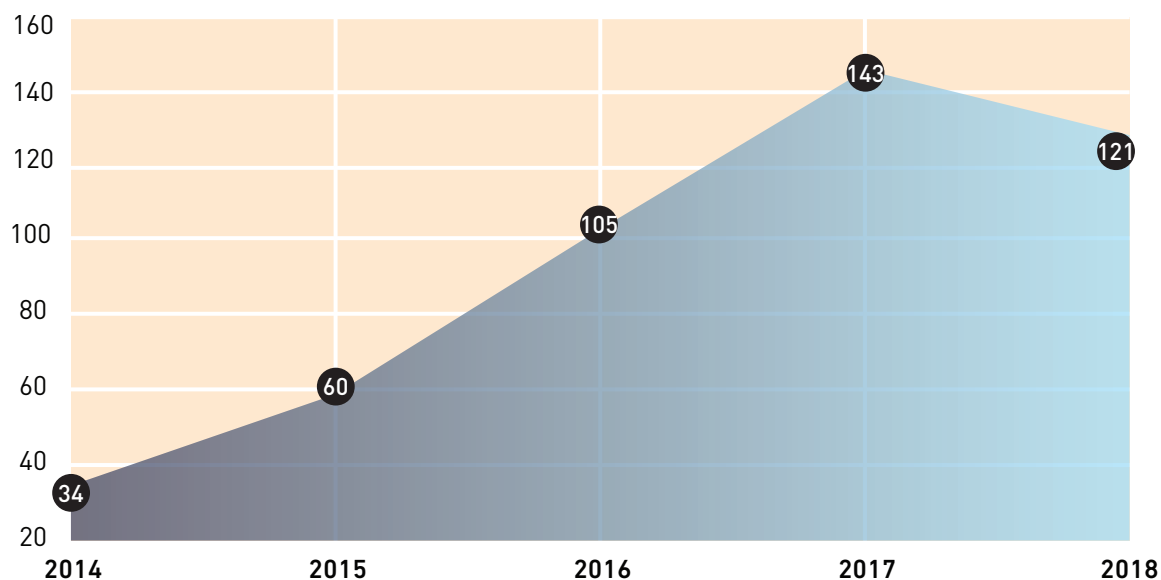
My Office has come across a number of cases where the FOI body argued that it was unable to make a decision within the required period due to the high volume of FOI requests on hand. While this may have been the case, it is unacceptable for such bodies to simply allow such resourcing issues to persist.

In my 2017 Report I noted that 143 (29%) of all applications accepted by my Office were recorded as deemed refused at both stages of the FOI request. While the number of deemed refusal at both stages is lower in 2018 (121), it still represents 28% of all applications accepted in that year. I had hoped to see a marked improvement in 2018 but unfortunately this has not happened.

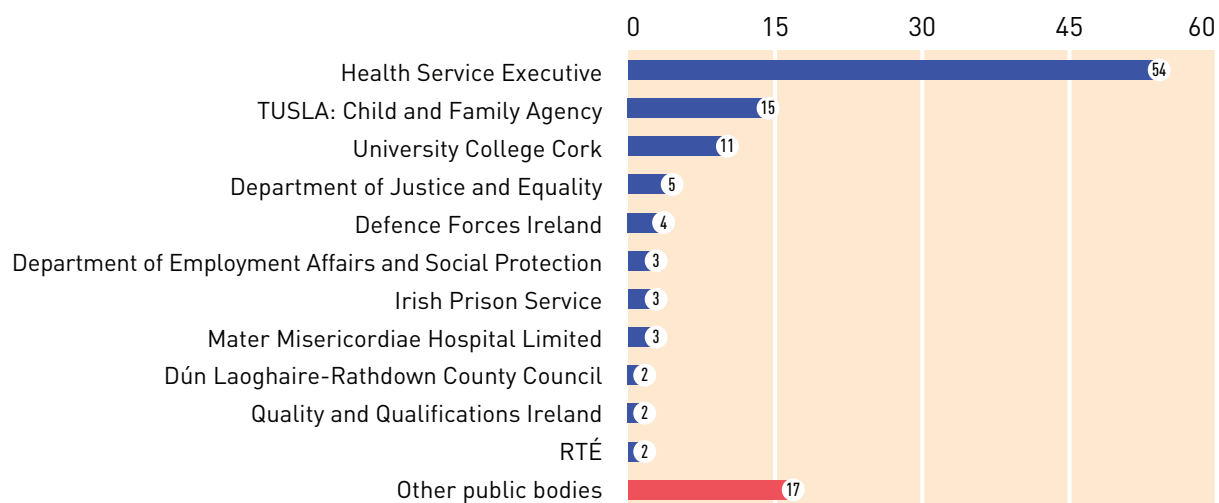
Under section 44 of the Act, I can carry out an investigation into the practices and procedures adopted by FOI bodies for the purpose of compliance with the provisions of the Act. I have decided to conduct an investigation in 2019 of compliance with the relevant deadlines within a select number of bodies and I will issue a report on my findings later in the year.

See Chapter 4, table 18 for further details on deemed refusals.

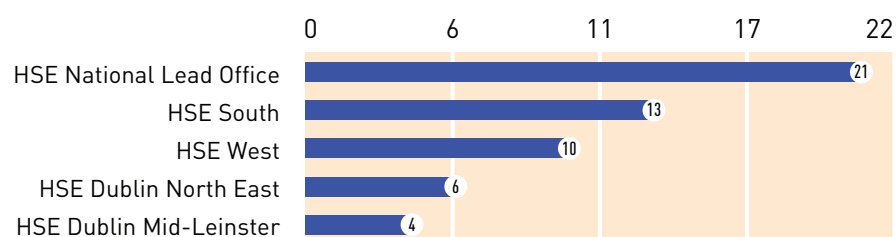
## Deemed refusals at both stages 2014 – 2018



## Deemed refusal at both stages by public body – 2018

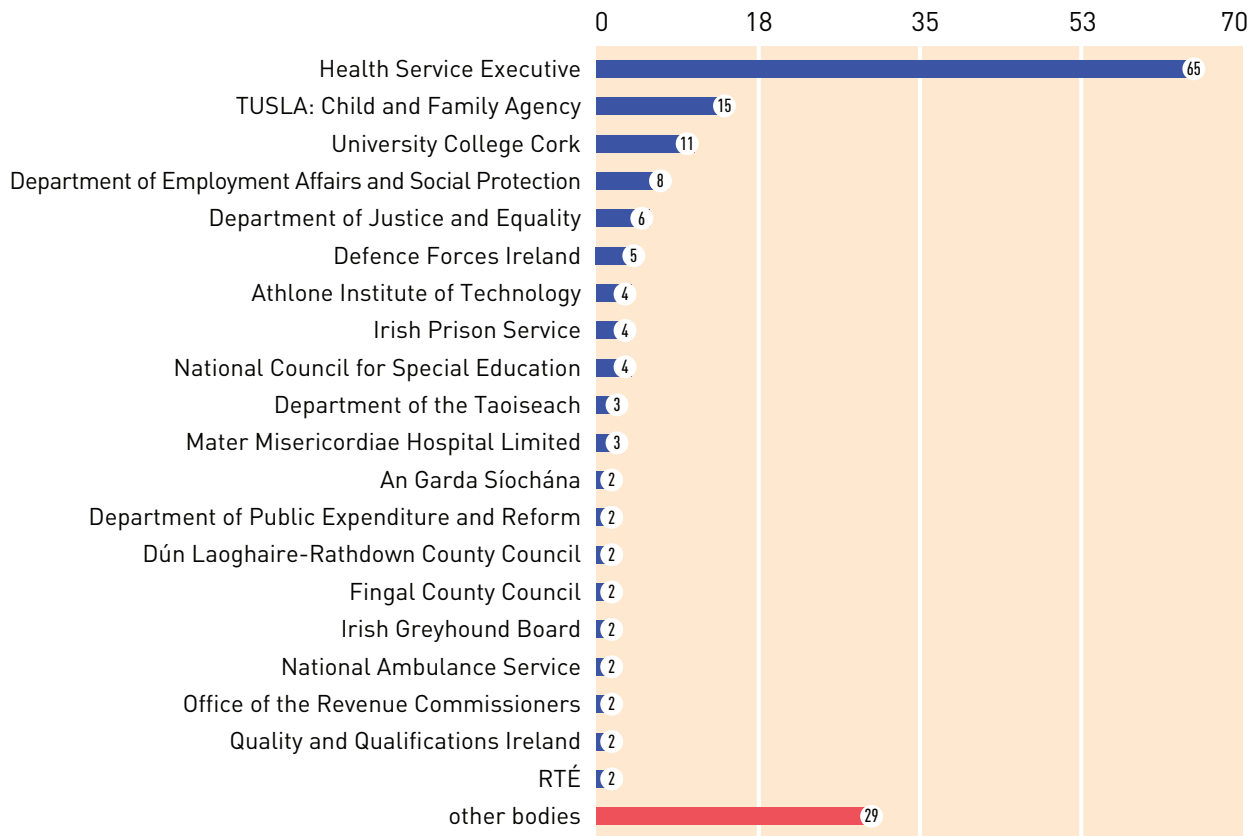


## Deemed refusal at both stages by HSE areas

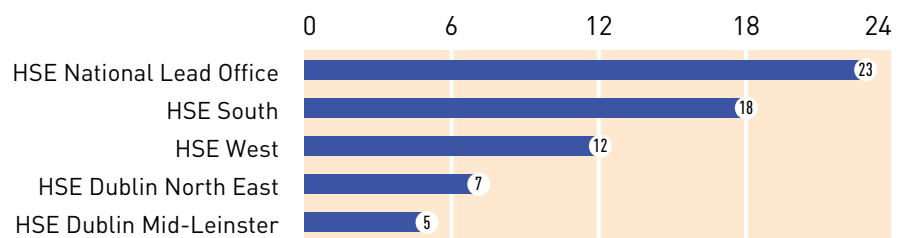




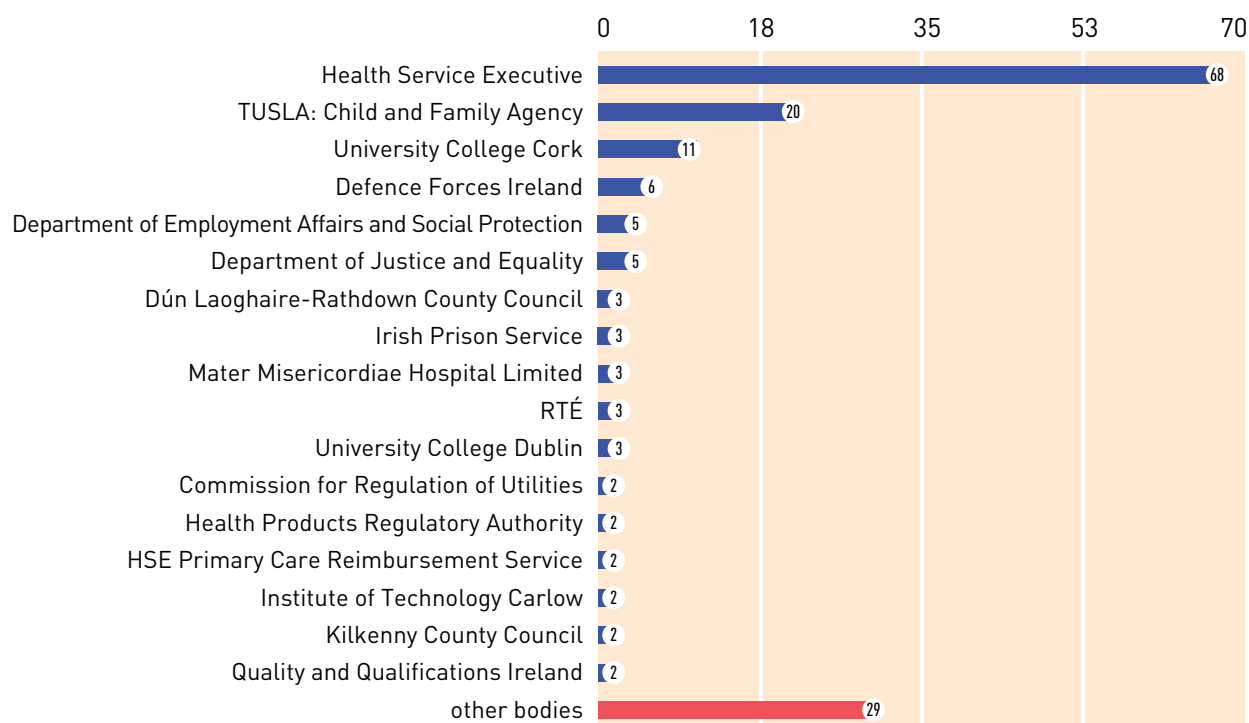
## Public body - deemed refusal at 1st stage of FOI request



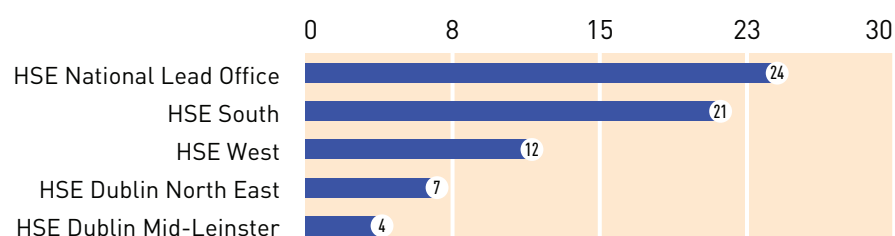
## Deemed refusal at 1st stage of FOI request by HSE area



## Public body - deemed refusal at 2nd stage of FOI request



## Deemed refusal at 2nd stage of FOI request by HSE area



Of the total number of applications for review accepted by my Office in 2018, 40% were deemed refused by the public body at either the original decision or the internal review stage of the FOI request. While this is down from 47% in 2017, the figure remains unacceptably high.

## Statutory Certificates issued by Ministers

### Section 34 of the FOI Act

Where a Minister of the Government is satisfied that a record is an exempt record, either by virtue of **section 32** (Law enforcement and public safety), or **section 33** (Security, defence and international relations) and the record is of sufficient sensitivity or seriousness to justify his or her doing so, that Minister may declare the record to be exempt from the application of the FOI Act by issuing a certificate under **section 34(1)** of the Act.

Each year, Ministers must provide my Office with a report on the number of certificates issued and the provisions of section 32 or section 33 of the FOI Act that applied to the exempt record(s). I must append a copy of any such report to my Annual Report for the year in question.

Section 34(13) of the FOI Act provides that

“Subject to subsections (9) and (10), a certificate shall remain in force for a period of 2 years after the date on which it is signed by the Minister of the Government concerned and shall then expire, but a Minister of the Government may, at any time, issue a certificate under this section in respect of a record in relation to which a certificate had previously been issued ...”

My Office has been notified of the following certificates renewed or issued under Section 34 in 2018.

- The Minister for Justice and Equality renewed five certificates in 2018. These will fall for review in 2020. A further certificate was reviewed during the year and a decision was taken to lapse the certificate. The Department confirmed it has eight certificates, three of which fall for review in 2019.

A copy of the notification from the Department of Justice and Equality is attached at **Appendix I** to this Report.

### Review under section 34(7)

I was notified by the Department of the Taoiseach that pursuant to section 34(7) of the FOI Act, the Taoiseach, the Minister for Finance and Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation carried out a review of the operation of subsection 34(1) of the Act.

The Department stated that fifteen certificates were reviewed, nine of which were issued by the Minister for Justice and Equality and six by the Minister for Foreign Affairs and Trade. The Department concluded that the Taoiseach, the Minister for Finance and Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation are satisfied that it is not necessary to request revocation of any of the 15 certificates reviewed.

A copy of the notification is attached at **Appendix II** to this Report.

## Acknowledgment

It has been a year of high achievement in all the areas of my Office. I want to thank all the staff of the Offices of the Information Commissioner and the Commissioner for Environmental Information for their commitment and dedication during the year. I thank my Senior Investigators, Elizabeth Dolan and Stephen Rafferty, for their support, and Edmund McDaid and Lisa Underwood for their assistance in compiling this Report.

I also want to thank the staff of the Information Communications Technology, Corporate Services, and Quality Stakeholder Engagement and Communications Units, who provide the shared services of the Office.

I particularly want to express my sincere thanks to Jacqui McCrum, the former Director General who left the Office in 2018 to take up a new role as Deputy Secretary General of the Department of Employment Affairs and Social Protection. I wish Jacqui well in her new role and I thank her for the tremendous work she undertook in driving forward a very challenging change programme across the organisation.

I am also delighted to welcome Elaine Cassidy as the new Director General who joined the Office in 2019. Elaine was formerly the Deputy Financial Services and Pensions Ombudsman. Previously, she worked in the multinational IT sector before joining the public service in 2008 as Head of Equal Status and Head of Mediation at the Equality Tribunal. Then in the Consumer, Competition and Company Law Unit at the Department of Jobs, Enterprise and Innovation. Elaine is also a member of the Mediators Institute of Ireland. I look forward to working closely with Elaine in the coming years in our ongoing efforts to provide more effective and efficient services to our customers.



# Chapter 2

## OIC activity in 2018



## Chapter 2: OIC activity in 2018

In this Chapter I set out a brief summary of OIC activity and issues concerning the operation of the FOI Act which arose during the year. I conclude the chapter with a note on my role as Appeal Commissioner under the European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015.

### OIC outreach programme

As I mentioned in my introduction, my Office developed a comprehensive outreach programme during the year. The programme comprises three streams, namely

- Increased direct engagement with FOI decision makers through various fora, including presentations and seminars,
- Increased direct engagement with public bodies through section 44 investigations and the development of a self-audit toolkit, and
- Increased engagement with public bodies at senior management level.

We began the roll-out of the programme by focusing on our direct engagement with FOI decision makers. We delivered a number of presentations as part of a decision makers course run by the Institute of Public Administration and at other conferences. We have also provided sector specific presentations to a number of public bodies and have worked closely with the Central Policy Unit who have been running FOI workshops across the various sectors.

Work is ongoing to roll out all three streams during 2019.

### Quality review of casework

In early 2018, my Office decided to undertake a quality review of the casework completed the previous year and that such reviews should form part of our annual quality assurance processes. The purpose of the review was to ensure that our procedures are being followed appropriately and consistently in order to enhance efficiency while maintaining fairness.



The project team compared compliance with procedures with the findings of a previous review of the Office's revised work processes that had been carried out in 2016. I am pleased to report that the quality review of 2017 casework found a marked improvement in compliance with procedures by the Support Unit and caseworkers alike. I commend my staff for the commitment shown to the provision of a quality service. I am also pleased to note that the review found a general improvement in the response times by FOI bodies to requests from my Office, which is a very welcome development.

## General Data Protection Regulation and the OIC/OCEI

In common with many other organisations, my Office expended considerable resources in preparation for the introduction of the General Data Protection Regulation (GDPR) which came into effect on 25 May 2018.

In order to carry out our functions under the FOI Act, my Office holds personal data and special category data. A detailed analysis was undertaken of the information we hold, why we hold it and how long we need to hold it. The GDPR required that certain information and policies be prepared and published and we took all the necessary steps to comply with these requirements in a timely manner, and making the relevant information available in the **Privacy Notice** on our website. GDPR requirements have also been taken into account in the development of our new ICT systems.

The work undertaken included a revision of records retention policies and schedules, informed by the GDPR. A major records destruction exercise was also undertaken as, while the records had been retained in accordance with the Office's previous records retention policy, the retention periods for some records were reduced significantly.

## Office of the Secretary General to the President

Bodies are deemed to be public bodies for the purposes of the FOI Act if they fall within one or more of the categories described in section 6(1) of the Act. Where a dispute arises between a body and my Office as to whether or not it is a public body, I must submit the dispute to the Minister for Public Expenditure and Reform for a binding determination (section 6(7) refers).

In my 2017 Annual Report I reported that following a referral from my Office, the Minister made a determination under section 6(7) of the Act that the Office of the Secretary General to the President (the Office) is a public body for the purposes of the Act.

I proceeded with my review of the Office's decision on the request, which was for details of the Secretary General's travel and expenses. I invited submissions from the Office. In response, the Office said that it "holds no records relating to the request that are amenable to the Act". Subsequently, it sought an extension of time to make a submission on the ground that it was seeking legal advice due to "significant constitutional and other implications".

I concluded my review in March 2018, more than a year after the FOI request had been made,

by annulling the Office's decision to refuse the request. I directed it to make a fresh decision on the applicant's request in accordance with the requirements of the FOI Act and having regard to the fact that the Office was a public body for the purposes of the Act.

My Office had no further engagements with the applicant on the matter. However, in April 2018, my Office received a further application for a review concerning the Office. In that case, the Office had refused a request for certain records relating to a State trip by the President and a delegation from his Office.

When my Office contacted the Office in connection with this new application for review, the Office stated that it was in discussion with the Government Secretariat in regard to the status of the Office under the FOI Act.

Subsequently, in May 2018 I received a letter from the Central Policy Unit, Department of Public Expenditure and Reform, which stated that on the advice of the Attorney General, the Minister had reopened his earlier determination as to whether or not the Office is a public body for FOI purposes.

My Office was afforded an opportunity to make a further submission on the matter. In June 2018 my Office informed the Central Policy Unit that our position on the matter remained as set out in our previous correspondence, namely that the Office was established by or under the Presidential Act 1938 and as such, is an entity to which section 6(1)(b) of the FOI Act applies (an entity established by or under any enactment, other than the Companies Acts). We also drew the Department's attention to the legally binding decision that I had issued in the earlier case.

I suspended my review of the later application pending a resolution of the matter. At the time of writing, I have not yet been notified of the Minister's revised determination on the matter. I understand that the matter was referred to the Office of the Attorney General for further consideration. While I appreciate that the Minister cannot make a final determination until he has had sight of the advice of the Attorney General, the extraordinary delay in finalising the matter is of some concern to me.

It is worth noting that the Department's published dispute resolution policy suggests that a determination will be given within 15 working days of receipt of a submission by this Office of a request for a determination, or within 25 working days where further information is sought from the entity concerned. It is in the interest of all parties that we get clarity on the status of the Office as soon as possible.

## Section 41 - non-disclosure provisions

Section 41 of the Act provides for the mandatory refusal of access to records whose disclosure is prohibited, or whose non-disclosure is authorised, by other enactments. It subordinates the access provisions of the Act to all non-disclosure provisions in statutes except for those cited in the Third Schedule to the Act.



Section 41 also provides for the review by a Joint Committee of both Houses of the Oireachtas of the operation of any enactments that authorise or require the non-disclosure of records to determine whether they should be amended or repealed, or be added to the Third Schedule.

All Government Ministers are obliged to furnish to the Joint Committee a report on the provisions of any enactments within their respective area of governance that authorise or require the non-disclosure of records, specifying whether they consider any of the provisions should be amended, repealed, or added to the Third Schedule. Ministers are required to lay their reports before the Oireachtas and to furnish my Office with a copy. I am entitled to furnish my opinion and conclusions on the reports to the Joint Committee and, indeed, must do so if requested by the Joint Committee.

In essence, the process is completed when the Joint Committee, having completed its review of the operation of the non-disclosure provisions, presents a report to each House of the Oireachtas of the results of the review. It may include in its report recommendations in relation to the amendment, repeal, or continuance in force of any of the provisions.

Under section 41(6), the first reports by the Ministers must be furnished to the Joint Committee within 30 days after the fifth anniversary of the day on which the last report was furnished under the FOI Acts 1997 & 2003 and subsequent reports must be furnished every five years thereafter.

In accordance with the provisions of the Act, reports were to be furnished and considered by the Joint Committee in 1999, 2004, 2009 and 2014 but this did not happen. For a variety of reasons, particularly the widespread late or non-submission of reports by Ministers, the Joint Committee has only once completed the review process, in 2006, on reports that had been due in 2004.

As far as I am aware, no reports were furnished in 2014. It is noteworthy that the Oireachtas saw fit to retain the requirement to review non-disclosure provisions in the 2014 Act, notwithstanding the repeated failure to complete the review process in accordance with the statutory time-frames prescribed.

In my Annual Report for 2017 I suggested that a practical way of bringing the process back on track could be to ensure all Ministers submit their next reports to the Joint Committee by May 2019, after which I could present my opinions and conclusions relating to those reports. I stated that I would pursue the matter with the Department of Public Expenditure and Reform during 2018.

Regrettably, the absence of any provision for coordination and enforcement of the review process has proved an impediment to the implementation of my suggestion. In previous years, in light of its responsibility for the implementation of the FOI Act, the Central Policy Unit had taken a lead liaison and coordination role in ensuring this statutory review process proceeded as envisaged in the legislation. I note in particular that in almost every previous reporting cycle it notified the various Departments of their statutory obligations under the previous provision of the FOI Acts 1997 & 2003.

On this occasion, however, the Central Policy Unit indicated that it did not deem it appropriate to write to Ministers on the matter, but stated that it had made the Departments aware of their obligations under section 41 during the course of meetings of the FOI Inter-departmental working groups at which all Departments were represented.

I now intend to contact all Departments and the clerk of the Joint Committee to follow up on outstanding reports with a view to ensuring that the review proceeds as planned. The review process is an important exercise in evaluating the interface between secrecy provisions in statute and the FOI Act.

## Freedom of Information Conference - Dundee

In May 2018, a member of my staff attended a conference organised by the Scottish Centre for Freedom of Information, in Dundee. Mr. Darren Fitzhenry, the Scottish Information Commissioner, highlighted the risk of only concentrating on the “here and now” of FOI case-work and emphasised the need to step back and consider the future direction of FOI. In that respect, he identified an ongoing need to ensure that FOI legislation captures the appropriate bodies and issues.

An interesting plenary discussion followed, in which participants debated the merits of a duty to publish in an era of “fake news”, where facts are not trusted.

## Appeals to the Courts

A party to a review, or any other person who is affected by a decision of my Office, may appeal to the High Court on a point of law. A decision of the High Court can be appealed to the Court of Appeal.

Six appeals of decisions of my Office were made to the High Court in 2018. One decision was appealed by the applicant and three by the relevant public body. Two decisions were appealed by affected third parties, one of which is a public body.

At the end of 2018, there were eight active appeals ongoing before the High Court, three appeals before the Court of Appeal, and one appeal before the Supreme Court. Five High Court appeals were concluded during the year. Three cases were struck out. An ex tempore judgment was delivered in one case dismissing an appeal by the applicant. In the case in question (Case 170021), I found that the Property Registration Authority was justified in its decision to refuse access to a specified Instrument under section 41 of the Act on the ground that its disclosure was prohibited by the Land Registration Rules 2012.

One written High Court judgment was delivered in 2018 and is summarised below. The judgment can also be accessed on our Office website at [www.oic.ie](http://www.oic.ie). The applicant appealed the decision of the High Court to the Court of Appeal in May 2018 and the case is listed for hearing in 2020.

## Grange v Information Commissioner & Anor [2016/380 MCA]

### Background and issue

The High Court delivered its judgment on 7 March 2018. The case concerned a request for access to certain records relating to a grant scheme paid to members of a roster of election observers managed by Irish Aid, a division of the Department of Foreign Affairs and Trade.

The applicant had been part of an earlier electoral observation roster operated by the Department, but was not on the roster in operation at the time of the request. The applicant had engaged with the Department on various matters relating to the roster and the grant scheme from the time he was not appointed to the new roster. The Department refused his request on the ground that it was frivolous or vexatious (section 15(1)(g)).

In my decision, I affirmed the Department's refusal to grant access to the records. I concluded that it was entirely appropriate to have regard to the broader issue of the manner in which a requester has engaged with a public body to date on a particular matter in considering whether a request was frivolous or vexatious.

The applicant appealed my decision to the High Court on a number of grounds. The main issues before the Court were whether I had the jurisdiction to take the applicant's alleged motivation and his other interactions with the Department into account in arriving at my decision, whether I had applied the correct and lawful definition of frivolous or vexatious and whether I had complied with fair procedures in not providing the applicant with an opportunity to examine and comment on the Department's submissions.

### Conclusions of the Court

The Court upheld my decision. It concluded that there was no error in my taking the applicant's alleged motivation into account. It was satisfied that I did not err in law taking into account matters other than the request. The Court was also satisfied that I properly came to the view that the request was to further the applicant's personal grievance and it was within my remit to classify that as vexatious. It found that I had not breached any constitutional right or fair procedures in conducting the review as I had.

## Re-use of public sector information

Under the European Communities (Re-use of Public Sector Information) Regulations 2005 (the PSI Regulations), an individual or a legal entity may make a request to a public sector body to release documents for re-use. The Regulations provide that, on receipt of a request in respect of a document held by it to which the PSI Regulations apply, a public sector body must allow the re-use of the document in accordance with the conditions and time limits provided for by the Regulations.

Where possible and appropriate, documents made available for re-use must be provided in open and machine-readable format.

Under Regulation 10 of the Regulations, decisions of public sector bodies can be appealed to my Office, which can review the following decisions:

- A refusal to allow the re-use of a document
- A refusal to grant the exclusive re-use of a document
- A decision to impose a fee for the re-use of a document, which the requester believes does not comply with the Regulations
- A decision to impose conditions on the re-use of a document

Two appeals were made to my Office under the PSI Regulations towards the end of the year and will be reviewed in 2019.



# Chapter 3

## Decisions

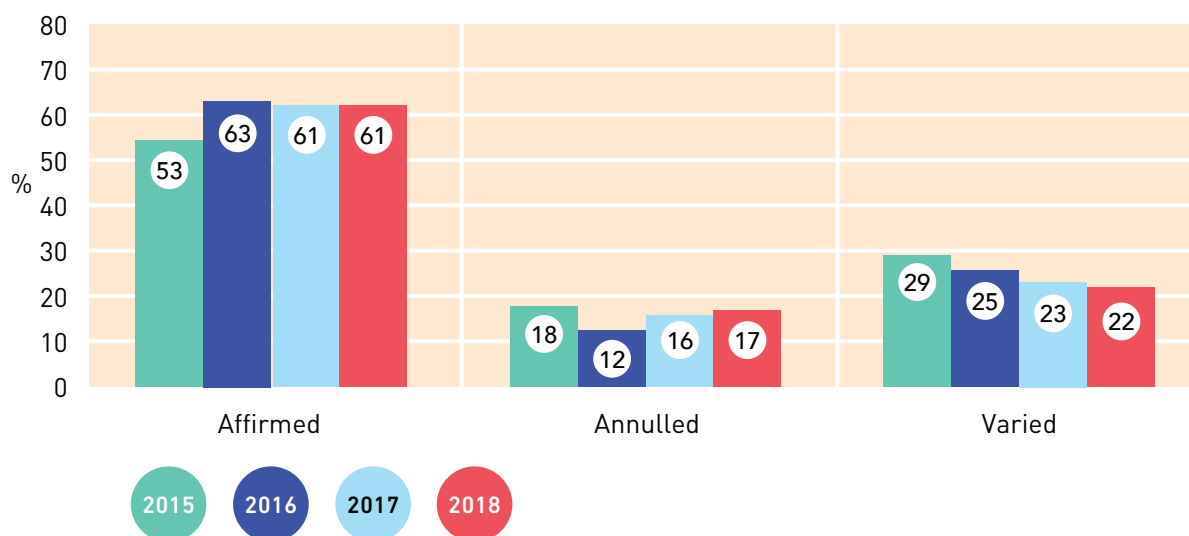


## Chapter 3: Decisions

### Formal decisions

My Office reviewed 443 cases in 2018 and issued 276 formal decisions on those reviews.

The table below provides a percentage comparison of the outcomes of the reviews which were completed by way of formal decision in 2018.



Of all the reviews completed in the year, 62% were concluded by way of a formal decision. The remaining reviews were closed by way of discontinuance, settlement or withdrawal. For a three-year comparison of the outcome of all reviews completed in the year, see Table 15, Chapter 4.

## Decisions of interest

The cases in this Chapter represent a sample of cases my Office reviewed during the year that were concluded by way of a formal decision. All formal decisions issued by my Office are published in full at [www.oic.ie](http://www.oic.ie).

### Records relating to the official business of FOI bodies held in non-official email and social media accounts are subject to the FOI Act - Cases 170175 and 170315

The Central Policy Unit has issued guidance concerning the holding of official information in non-official systems, e-mail accounts, and devices (see **CPU notice 24**). The guidance acknowledges that exceptionally, official information that is subject to FOI may be transmitted via non-official systems or external devices, e.g. web-based email, mobile phones or tablets.

Among other things, the guidance provides that if records relate to official functions and/or business activities of a public body and if the public body has a legal right to procure the records regardless of whether they are held in official or non-official systems (including web-based email such as Gmail or Hotmail), they are subject to the FOI Act.

In 2018, the question of whether relevant emails were held in non-official email accounts arose in two separate reviews.

In **Case 170175**, a journalist submitted a request to the Department of the Taoiseach for access to emails sent to the Gmail account of former Taoiseach, Enda Kenny, over a specified period. He subsequently applied to my Office for a review of the Department's decision on a number of grounds, one of which was that the Department had not considered all relevant records for release.

While the Department had contacted certain individuals it identified as having possibly sent emails to, or received emails from, the former Taoiseach's Gmail account, it informed my Office that the former Taoiseach was not asked for details of the account as it was private and not under the control of the Department.

It was clear to me that the former Taoiseach had used the account to exchange emails in relation to official business. Insofar as the account was used in this way, I did not accept that it was reasonable to characterise its contents as "private". I considered it reasonable and necessary for the Department to enquire of the former Taoiseach whether the Gmail account held other emails coming within the scope of the applicant's request.

I found that the Department had not justified its refusal of the request as it had not taken all reasonable steps to ascertain the whereabouts of relevant records. I directed it to ask the former Taoiseach if the email account contained further records and if it did, to retrieve them and make a decision on their release.

In **Case 170315**, a question arose as to whether the former Minister for Justice and Equality held additional records of correspondence with a named public relations company.



In its submission to my Office the Department of Justice and Equality argued that while it is responsible for the management of Departmental email accounts, private email and other social media accounts of a former Minister could not be said to be under its control. The Department said that it would not be appropriate to ask the former Minister whether she had records in her personal email accounts, in an attempt to respond to an FOI request. It said that it would be outside of the scope of the FOI Act to seek such information from the former Minister.

Again, it was apparent to me that the former Minister and some of her staff used Gmail addresses in correspondence with the company about official functions and activities of the Department. I directed the Department to ask the former Minister whether she holds additional records within the scope of the applicant's FOI request.

### **Release of records relating to the reimbursement approvals for novel drugs could have a serious, adverse effect on the financial interests of the State - Case 170395**

Pharmaceutical companies apply to the HSE for a maximum reimbursement price for their medicines. A maximum reimbursement price is the maximum price that the State is willing to pay for a medicine that is fully or partially covered under the State's various drug schemes such as the General Medical Card Scheme. Even though there is also a private market for medicines in Ireland, most pharmaceutical companies will also want a HSE approved maximum reimbursement price for their medicine so that the medicine can be made available to patients who benefit from full or partial cover for the costs of their medicines under the State schemes.

The mechanism for setting the maximum reimbursement price is governed by legislation. When considering the price submitted by a pharmaceutical company, the HSE is obliged to take account of a wide range of criteria.

In general, where the main issue with an application for an expensive medicine is its proposed maximum reimbursement price, negotiations can take place about the price between the applicant company and the HSE.

In **Case 170395**, the HSE refused the applicant's request for records relating to approvals for reimbursement of novel drugs. Based on the HSE's submission to my Office wherein it set out its arguments for refusing access to a large number of relevant records, I considered the exemption contained in section 40 to be of most relevance. Section 40(1)(a) provides for the refusal of a request where access to the records sought could reasonably be expected to have a serious, adverse effect on the financial interests of the State.

The HSE argued that while the pharmaceutical companies have a monopoly on novel drugs, it had a limited budget to spend on them. In essence the HSE argued that pharmaceutical companies will not engage in price negotiations with the HSE unless their pricing proposals and related information, and the general content of the negotiations, are kept confidential.

I accepted that, given the circumstances, the HSE had no scope to negotiate better deals with pharmaceutical companies other than in complete confidence. I also accepted that in the absence of such deals being agreed, the additional cost to the Exchequer would be considerable.

I noted that the public interest in enhancing transparency in relation to the decision making process on the applications for reimbursement is significant given the amount of public monies involved. On the other hand, I noted that there is also a significant public interest in the HSE being able to negotiate better terms for the supply of novel drugs which reduces the overall costs of funding novel drugs and thus makes funds available for other novel drugs or other health services. While the reimbursement process may not be ideal in terms of transparency, I decided that the public interest did not weigh in favour of granting access to the records at issue.

### Unjustified reliance on refusal to confirm or deny provisions – Cases 170429 and 170247

Several exemptions in the FOI Act contain what are commonly referred to as neither confirm nor deny provisions. The purpose of such provisions is to allow a public body to refuse to confirm or deny the existence of relevant records where doing so could give rise to the very harms the exemptions seek to protect against.

In **Case 170429**, the applicants sought a review of a decision taken by the Department of Employment Affairs and Social Protection on their request for records relating to themselves as they had expected to receive records concerning the circumstances which led to an investigation by the Department's Special Investigations Unit. That Unit carries out a wide range of control activities and projects to investigate suspected social welfare fraud.

During the course of the review, the Department located an additional relevant record but it argued that to confirm the existence of the record would give rise to certain specified harms.

It is often the case that a public body's reliance on a neither confirm nor deny provision is prompted by the precise wording of the particular request. For example, if a request was made for access to records relating to an investigation being undertaken by a public body and the body did not wish to disclose the fact that such an investigation was taking place for fear of prejudicing the investigation, it might consider refusing to confirm or deny the existence of records under section 32(2). To disclose the existence or non-existence of records in such a case would allow the requester to draw conclusions as to whether or not an investigation was underway.

However, the wording of the request made in Case 170429 did not give rise to any such issues. The request was for all records relating to the applicants. I considered that to disclose the fact that an additional record exists did not disclose anything about the nature or the content of the record. Furthermore, while it would generally be expected that a public body would give a brief description of records to which access is being refused, it is not always appropriate to do so, particularly where doing so would give rise to a harm the body was seeking to avoid.

Nevertheless, in order to preserve the Department's right of appeal in connection with its reliance on the neither confirm nor deny provision, I decided to deal with the review in two stages. Firstly, I annulled the Department's decision to rely on the neither confirm nor deny provision. I did not notify the applicant of that decision.

As the Department did not appeal my decision, I was then in a position to acknowledge the existence of the additional record. I subsequently issued a second decision on the case wherein I directed the release of the record at issue.

Due to the nature of the Department's arguments for refusing access to the record, my second decision contained very little detail of my reasons for not accepting those arguments as had it done so, it might arguably have increased the possibility of the occurrence of the harms the Department had sought to avoid.

In **Case 170247**, Cavan County Council refused to confirm or deny the existence of records regarding allegations of a breach of financial procedures and any related investigation. The Council cited section 35(4) as a ground for refusal. That provision allows a body to refuse to confirm or deny the existence of records where it considers that the disclosure of the existence or non-existence of relevant records would be likely to prejudice the future supply of similar important confidential information.

I noted in my decision that the Council had previously issued a statement in response to certain media coverage wherein it confirmed that an independent investigation was ongoing into allegations of a breach of financial procedures. It was clear, therefore, that allegations of a breach of financial procedures had been made and that an investigation of those allegations was being conducted at that time.

In such circumstances, I could not see how the disclosure of the existence of relevant records, if such records exist, could possibly prejudice the future supply of similar important confidential information. I did not accept that the mere disclosure of the existence of records relating to a particular investigation being carried out on foot of allegations made by an individual would, of itself, result in persons refusing to make similar allegations in the future. I also noted that the disclosure of the existence of relevant records would disclose nothing more than the fact that the Council holds relevant records and would not, of itself, disclose details of the nature or contents of the records or the circumstances surrounding their creation.

I annulled the Council's decision to refuse to disclose whether or not records coming within the scope of the applicant's request existed and I directed the Council to conduct a fresh decision-making process in the request.

### **Statement of reasons required for placement of pipe onto property - Case 170570**

Under section 10 of the Act, any person who is affected by an act of an FOI body and has a material interest in a matter affected by the act or to which it relates is entitled to a statement of the reasons for the act.

In **Case 170570**, the applicant applied for a statement of reasons for Kerry County Council's decision to put a pipe into his land to drain another private property and for its subsequent refusal to remove the pipe.

The pipe in question had been placed by the Council under a public road and into a drain inside the boundary of the applicant's property. The Council refused to provide a statement of reasons as it argued that the applicant had not demonstrated that he had been affected by the acts in question or how he had been affected. It argued that the pipe had since been sealed and its action had not adversely impacted the applicant's property.

The applicant alleged that his property was flooded and damaged as a result of water flowing through the pipe in question. I explained in my decision that my Office has no role in examining whether or not the placing of the pipe in the first instance or the subsequent refusal to remove the pipe had resulted in damage to the applicant's property. However, I further explained that even if I were to accept that the acts in question did not result in the damage alleged, this does not mean that the applicant was not affected by those acts and that he does not have a material interest in a matter affected by those acts. I found that the mere existence of the pipe on the applicant's land is sufficient for him to be deemed to have been affected by the acts of the Council.

I was satisfied that the applicant had a material interest in a matter affected by the acts of the Council. I found that the Council was not justified in refusing to provide a statement of reasons for the acts in question and I directed it to provide a statement of reasons.

### **Release of redacted CCTV footage not required – Case 170497**

The applicant sought access to a copy of CCTV footage of himself in a particular office of the Department of Employment Affairs and Social Protection on a specified time and date. The Department refused the request under section 37 on the ground that granting the request would involve the disclosure of personal information relating to individuals other than the applicant. During the course of the review, the applicant argued that he had sought only his personal information and that he had not been offered the option of redacted CCTV footage.

Section 18(1) of the Act provides that if it is practicable to do so, an FOI body should grant access to an otherwise exempt record by preparing a copy of the record with the exempt information removed. However, I take the view that being "practicable" necessarily means taking a reasonable and proportionate approach in determining whether to grant access to parts of records.

I do not accept that the fact that it might be possible to redact a record means that the public body must always do so. The FOI Act recognises that there are limitations on the resources, both financial and non-financial, a public body must expend in processing requests. In this case, I noted that the Department simply did not have the necessary facilities required to allow it to prepare a copy of the record with the exempt information removed in order to grant the request. I found that the Department was not required to provide a redacted version of the record sought.

I nevertheless noted that the Department had subsequently received an estimate of the cost involved in pixelating the CCTV footage and had informed the applicant that it was willing to release it if he was prepared to pay the cost of preparing the footage for release.

### Refusal of request by next of kin for access to medical records of deceased individual not justified - Case 170521

The Freedom of Information Act 2014 (Section 37(8)) Regulations 2016 provide for the release of personal information relating to a deceased individual where the requester belongs to one of a number of classes, including the following:

“... the requester is the spouse or next of kin of the individual and, in the opinion of the head, having regard to all the circumstances, the public interest, including the public interest in the confidentiality of personal information, would on balance be better served by granting than by refusing to grant the request”.

In **Case 170521**, the applicant, as next of kin, sought access to the medical records of his deceased brother held by Mayo General Hospital spanning several decades. He indicated that he might seek to challenge the deceased's will and therefore wished to determine the deceased's medical condition in the years prior to his death by accessing his records. However, he also argued that there were public interest factors supporting release including transparency around the level of care which had been provided to the deceased.

The HSE refused the request. It argued that the applicant's interest in obtaining access was a private, as opposed to a public, interest. It argued that as there was no documented complaint in relation to the deceased's care the public interest in openness and transparency did not require release.

Pursuant to section 48(1) of the Act, the Minister for Public Expenditure and Reform published guidance concerning access to records relating to deceased persons. Under section 48(3) public bodies must have regard to such guidance in the performance of their functions under the Act. The guidance suggests that certain factors should be taken into consideration when deciding if release is appropriate to the spouse or next of kin of the deceased, including whether the deceased would have consented to the release of the records to the requester when living, the nature of the records to be released and any other relevant circumstances.

Among other things, the HSE argued that the right to privacy, even after death, is a very strong right and that it has a duty to maintain the confidentiality of its patients at all times. It argued that release of the records is considered as release to the world at large and that the records are of an inherently private nature. It stated that having considered the confidentiality of the records concerned, the lack of clarity as to whether the deceased would have consented to the release of the records, the inherently private nature of the records, the Irish Medical Council guidance, and the reasons set out by the applicant, it decided to refuse the request.

I noted in my decision that by making the relevant Regulations, the Oireachtas had determined that the next of kin **shall** have a right of access to the records of deceased persons, subject to consideration of the public interest and all the circumstances. While accepting that medical

records are inherently private and confidential, I considered that by making specific provision for access to the records of deceased persons, the Oireachtas envisaged that the next of kin would have a potential right of access to all relevant records, including medical records. I noted that had it been intended that medical records would not potentially fall for release, such a restriction could easily have been provided for.

I also accepted that as records released pursuant to the FOI Act are released without any restriction as to how they may be used, such release is regarded, in effect, as release to the world at large. This is true of all records released under FOI regardless of the identity of the requester. Indeed, it is also true of requests where the requester seeks his/her own personal information. I noted, nevertheless, that the Oireachtas saw fit to determine that access to the records of deceased persons shall be granted to certain categories of requesters, provided the requirements of the Regulations have been met. As such, I did not accept that the fact that the release of records under FOI is essentially release to the world at large provides a reasonable ground for refusing access to a category of requester that the Oireachtas has determined should be granted access.

I found that the HSE had not justified its refusal of the request. I found that it was not appropriate for the HSE to refuse access on the basis that there was no evidence that the deceased had actively consented to such release prior to his death. I also found that while the next of kin of a deceased person might have no concerns whatsoever as to the standard of care and treatment afforded to the deceased, this does not mean that the relevant public body should not be subject to transparency or accountability in connection with that care and treatment. Bearing in mind the principles of openness and transparency I found that in the particular circumstances of this case the balance of interests favoured release of the majority of the records, with certain third party personal information redacted on the basis of section 37.

### **Records relating to a review by the Commissioner are not excluded from the Act as a class – Case 180200**

The Mater Misericordiae Hospital Limited refused the applicant's request for access to its correspondence with my Office in relation to two previous reviews under section 15(1)(g) on the ground that the request was frivolous or vexatious. It argued that the request was made in bad faith based on its view that records relating to the performance of the functions of the Office of the Information Commissioner are not subject to the FOI Act and that access would not be granted to the records at issue by making a request to my Office.

I found that the Hospital was mistaken in its understanding of the applicability of the FOI Act to records relating to the performance of the functions of the Commissioner. The FOI Acts 1997 & 2003 did not apply to records relating to reviews undertaken by the Commissioner, meaning that such records could not be accessed under the Acts, regardless of whether they were held by my Office or any other public body that was subject to the Acts.

However, this is no longer the case. Under the FOI Act 2014, my Office is now listed in Schedule 1, Part 1(q), as a partially included agency. In essence, my Office is a public body only in respect of records relating to general administration of the functions of the Commissioner. As such, my Office is not required to grant access to records relating to reviews. However, this exclusion does not extend to such records held by other public bodies. It is open to requesters to seek access to records relating to reviews that are held by other public bodies and it is a matter for the public bodies concerned to decide, based on the provisions of the Act, whether access to the records sought should be granted.

I found that the mere fact that records relating to a review cannot be accessed by making a request to my Office does not mean that a request for access to copies of such records held by the public body that was party to the review can be regarded as having been made in bad faith. In the circumstances of the case, I found that the Hospital had not justified its refusal of the request and I directed the Hospital to conduct a fresh decision making process on the request.

### Poor handling and processing an FOI request - Case 180274

The applicants submitted a request to the National Maternity Hospital for various records relating to themselves and their deceased child. The Hospital did not issue an initial decision on the request. At internal review stage, it issued a decision that failed to explain why the request was being refused.

Amongst other issues, the Hospital also took an unduly narrow interpretation of at least one part of the request, it referred the applicants to another body regarding records that the Hospital holds, and it gave no details of the right to seek a review by my Office. Furthermore, it became clear during my review that the Hospital had not examined any records covered by the request.

In such circumstances, I found that it would not be appropriate for me to make a first instance decision where the Hospital had not properly considered the records at issue for release. While I was very conscious of additional delays causing potential further upset to the applicants given the tragic background to the case, I found that my only appropriate option was to annul the Hospital's effective refusal of the applicants' request and to direct it to conduct a fresh decision making process in line with the requirements of the FOI Act.

The Hospital has been subject to FOI for 20 years. There are many resources freely available to decision makers, including CPU guidance notes and templates and the guidance notes on my website. Given these circumstances, it is difficult to understand why this request was dealt with so poorly. I told the Hospital that I expect to see an improvement in the quality of its decision making in any further cases that come before me, including any arising further to this case. At the time of writing, the applicants had made no further application for review to my Office.



# Chapter 4

## Statistics



## Chapter 4: Statistics

### Section I - Public Bodies - 2018

**Table 1:** Overview of FOI requests dealt with by public bodies

**Table 2:** FOI requests dealt with by public bodies and subsequently appealed

**Table 3:** FOI requests received - by requester type

**Table 4:** Outcomes of FOI requests dealt with by public bodies

**Table 5:** Analysis of FOI requests dealt with by public service sector

**Table 6:** FOI requests received by civil service Departments/Offices

**Table 7:** FOI requests received by local authorities

**Table 8:** FOI requests received by the HSE

**Table 9:** FOI requests received by voluntary hospitals, mental health services regulators and related agencies

**Table 10:** FOI requests received by third-level education institutions

**Table 11:** FOI requests received by other bodies

Figures for the above tables are supplied by the Department of Public Expenditure and Reform, the HSE, the Local Authorities FOI Liaison Group, the Department of Health, the National Federation of Voluntary Bodies and the Liaison Group for the Higher Education Sector, and collated by the Office of the Information Commissioner.

## Section II - Office of the Information Commissioner - 2018

**Table 12:** Analysis of applications for review received

**Table 13:** Analysis of review cases

**Table 14:** Applications for review accepted in 2018

**Table 15:** Outcome of completed reviews – 3-year comparison

**Table 16:** Subject matter of review applications accepted – 3-year comparison

**Table 17:** Applications accepted by type – 3-year comparison

**Table 18:** Deemed refusals due to non-reply by public bodies

## Section I – Public Bodies - 2018

**Table 1: Overview of FOI requests dealt with by public bodies**

Requests on hand - 01/01/2018	6,132
Requests received in 2018	
Personal	21,376
Non-personal	15,230
Mixed	290
<b>Total</b>	<b>36,896</b>
Total requests on hand during year	43,028
Requests dealt with	35,663
Requests on hand - 31/12/2018	7,365

**Table 2: FOI requests dealt with by public bodies and subsequently appealed**

	Number	Percentage
FOI requests dealt with by public bodies	35,663	
Internal reviews received by public bodies	1,082	3%
Applications accepted by the Commissioner	431	1.2%

**Table 3: FOI requests received - by requester type**

Requester Type	Number	Percentage
Journalists	7,769	21%
Business	2,035	6%
Oireachtas Members	642	2%
Staff of public bodies	1,253	3%
Clients	19,637	53%
Others	5,560	15%
<b>Total</b>	<b>36,896</b>	



**Table 4: Outcomes of FOI requests dealt with by public bodies**

Request Type	Number	Percentage
Requests granted	17,146	48%
Requests part-granted	8,901	25%
Requests refused	5,497	15%
Requests transferred to appropriate body	681	2%
Requests withdrawn or handled outside FOI	3,438	10%
<b>Total</b>	<b>35,663</b>	

**Table 5: Analysis of FOI requests dealt with by public service sector**

	granted	part granted	refused	transferred	withdrawn or handled outside of FOI
Civil Service departments	25%	38%	23%	2%	12%
Local Authorities	46%	25%	22%	0.5%	7%
HSE	68%	16%	7%	3%	6%
Voluntary Hospitals, Mental Health Services Regulators and Related Agencies	76%	7%	6%	1%	10%
Third Level Institutions	48%	28%	15%	0.5%	8%
Other bodies	56%	19%	10%	2%	13%

**Table 6: FOI requests received by civil service Departments/Offices**

Civil Service Department/Office	Personal	Non-personal	Mixed	Total
Department of Employment Affairs and Social Protection	2,032	467	11	2,510
Department of Justice and Equality	378	449	0	827
Department of Education and Skills	148	414	6	568
Department of Agriculture, Food and the Marine	206	329	0	535
Department of the Taoiseach	9	479	2	490
Department of Health	8	472	0	480
Department of Housing, Planning and Local Government	9	445	1	455
Department of Transport, Tourism and Sport	16	373	0	389
Department of Finance	4	380	0	384
Department of Communications, Climate Action and Environment	2	360	0	362
Office of the Revenue Commissioners	158	170	0	328
Department of Foreign Affairs and Trade	47	272	1	320
Department of Culture, Heritage and the Gaeltacht	5	234	0	239
Department of Business, Enterprise and Innovation	36	194	0	230
Department of Public Expenditure and Reform	7	200	0	207
Office of Public Works	7	145	0	152
Department of Defence	24	116	0	140
Department of Children and Youth Affairs	4	132	0	136
Department of Rural and Community Development	1	57	0	58
Standards in Public Office Commission	0	32	0	32
Office of the Ombudsman	15	7	0	22
Office of the Information Commissioner	0	13	0	13
Commission for Public Service Appointments	0	2	0	2
Office of the Commissioner for Environmental Information	0	1	0	1
<b>Total</b>	<b>3,116</b>	<b>5,743</b>	<b>21</b>	<b>8,880</b>



**Table 7: FOI requests received by local authorities**

Local Authority	Personal	Non-personal	Mixed	Total
Dublin City Council	223	551	0	774
South Dublin County Council	93	149	1	243
Fingal County Council	68	171	0	239
Limerick City and County Council	56	167	0	223
Dún Laoghaire-Rathdown County Council	42	155	0	197
Cork City Council	22	166	1	189
Cork County Council	64	115	6	185
Kildare County Council	23	155	6	184
Meath County Council	18	163	2	183
Galway City Council	39	125	5	169
Kilkenny County Council	6	162	1	169
Galway County Council	36	116	4	156
Donegal County Council	2	151	0	153
Tipperary County Council	13	136	0	149
Mayo County Council	11	130	1	142
Clare County Council	21	106	9	136
Louth County Council	31	103	0	134
Roscommon County Council	8	112	5	125
Wicklow County Council	18	107	0	125
Wexford County Council	17	94	0	111
Laois County Council	26	71	1	98
Kerry County Council	5	92	0	97
Leitrim County Council	7	89	0	96
Offaly County Council	9	87	0	96
Longford County Council	7	87	0	94
Monaghan County Council	3	91	0	94
Cavan County Council	2	86	0	88
Waterford City and County Council	23	63	0	86
Carlow County Council	2	81	1	84
Sligo County Council	0	83	0	83
Westmeath County Council	9	73	0	82
<b>Total</b>	<b>904</b>	<b>4,037</b>	<b>43</b>	<b>4,984</b>
Regional Assemblies	1	4	0	5

**Table 8: FOI requests received by the HSE (excluding certain agencies covered in Table 9)**

HSE area*	Personal	Non-Personal	Mixed	Total
HSE South	3,723	95	5	3,823
HSE West	3,420	311	0	3,731
HSE Dublin North East	1,269	96	0	1,365
HSE Dublin Mid-Leinster	1,056	85	7	1,148
HSE National	0	639	0	639
<b>Total received</b>	<b>9,468</b>	<b>1,226</b>	<b>12</b>	<b>10,706</b>
*Figures represent the regional structure of the HSE				

**Table 9: FOI requests received by voluntary hospitals, mental health services regulators and related agencies**

Hospital/Service/Agency	Personal	Non-Personal	Mixed	Total
TUSLA - Child and Family Agency	881	106	5	992
St James's Hospital	923	21	1	945
Tallaght Hospital	796	7	0	803
Mater Misericordiae University Hospital	444	19	0	463
Beaumont Hospital	391	26	0	417
Our Lady's Hospital for Sick Children, Crumlin	307	11	0	318
Rotunda Hospital	290	11	6	307
St. Vincent's University Hospital, Merrion	237	19	2	258
National Maternity Hospital, Holles Street	246	6	0	252
St. John's Hospital, Limerick	222	1	0	223
Temple Street Children's University Hospital	192	9	0	201
Coombe Hospital	162	9	0	171
South Infirmary / Victoria Hospital, Cork	124	2	0	126
Hospitaller Order of St. John of God	114	0	0	114
Mercy Hospital, Cork	84	9	0	93
Dublin Dental University Hospital	73	1	0	74
Medical Council	39	34	0	73
Cappagh Orthopaedic Hospital	65	6	0	71
Health Information & Quality Authority	15	51	0	66
National Rehabilitation Hospital, Dún Laoghaire	53	2	0	55
St. Michael's Hospital, Dún Laoghaire	51	4	0	55
Royal Victoria Eye & Ear Hospital	51	1	0	52
National Treatment Purchase Fund	0	34	0	34
Nursing and Midwifery Board of Ireland	25	5	0	30
Food Safety Authority of Ireland	1	28	0	29
Central Remedial Clinic	26	1	0	27
Peamount Hospital	25	2	0	27
Daughters of Charity Services	21	1	0	22
Inc. Orthopaedic Hospital, Clontarf	19	2	0	21
Mental Health Commission	13	8	0	21
Other Hospitals/Services/Agencies	153	45	5	203
<b>Total</b>	<b>6,043</b>	<b>481</b>	<b>19</b>	<b>6,543</b>

**Table 10: FOI requests received by third-level education institutions**

Third Level Education Body	Personal	Non-Personal	Mixed	Total
University College Dublin	45	88	0	133
University College Cork	23	68	3	94
Trinity College Dublin, the University of Dublin	14	72	0	86
University of Limerick	15	64	0	79
Dublin City University	6	69	1	76
National University of Ireland Galway	14	57	0	71
Dublin Institute of Technology	13	36	2	51
National University of Ireland Maynooth	11	35	0	46
Waterford Institute of Technology	10	18	0	28
Dundalk Institute of Technology	5	19	0	24
Galway-Mayo Institute of Technology	6	16	0	22
Institute of Technology Tallaght	5	13	3	21
Other bodies	16	80	0	96
<b>Total</b>	<b>183</b>	<b>635</b>	<b>9</b>	<b>827</b>

Table 11: FOI requests received by other bodies

Public body	Personal	Non-Personal	Mixed	Total
An Garda Síochána	195	298	4	497
Irish Prison Service	382	113	0	495
Defence Forces Ireland	299	82	1	382
Courts Service	96	126	0	222
RTÉ	6	208	0	214
Houses of the Oireachtas Service	2	164	1	167
Health and Safety Authority	15	20	122	157
National Transport Authority	1	156	0	157
Social Welfare Appeals Office	136	3	0	139
Transport Infrastructure Ireland	1	107	1	109
Public Appointments Service	44	43	15	102
State Examinations Commission	20	76	1	97
Irish Water	26	64	4	94
Inland Fisheries Ireland	3	89	1	93
National Treasury Management Agency	6	86	1	93
Road Safety Authority	18	69	2	89
Central Bank of Ireland	25	57	2	84
Strategic Banking Corporation of Ireland	0	78	0	78
Commission for Regulation of Utilities	25	46	5	76
An Bord Pleanála	0	63	0	63
Charities Regulatory Authority	1	49	3	53
Caranua	18	32	1	51
Environmental Protection Agency	2	45	0	47
Garda Síochána Ombudsman Commission	29	18	0	47
Fáilte Ireland	2	43	0	45
Higher Education Authority	2	39	0	41
Kildare and Wicklow Education and Training Board	9	27	1	37
Health Products Regulatory Authority	1	35	0	36
National Asset Management Agency	3	32	0	35
Central Statistics Office	6	29	0	35



City of Dublin Education and Training Board	13	20	1	34
IDA Ireland	0	32	0	32
Residential Tenancies Board	27	5	0	32
Data Protection Commission	4	27	0	31
Office of the Director of Public Prosecutions	0	31	0	31
Other bodies (96 bodies with fewer than 31 requests each)	244	692	20	956
<b>Total</b>	<b>1,661</b>	<b>3,104</b>	<b>186</b>	<b>4,951</b>

## Section II - Office of the Information Commissioner – 2018

**Table 12: Analysis of applications for review received**

Applications for review on hand - 01/01/2018	15
Applications for review received in 2018	543
<b>Total applications for review on hand in 2018</b>	<b>558</b>
Applications discontinued	17
Invalid applications	71
Applications withdrawn	15
Applications rejected	3
Applications accepted for review in 2018	431
<b>Total applications for review considered in 2018</b>	<b>537</b>
<b>Applications for review on hand - 31/12/2018</b>	<b>21</b>

**Table 13: Analysis of review cases**

Reviews on hand - 01/01/2018	125
Reviews accepted in 2018	431
<b>Total reviews on hand in 2018</b>	<b>556</b>
Reviews completed in 2018	443
<b>Reviews carried forward to 2019</b>	<b>113</b>

**Table 14: Applications for review accepted in 2018**

Health Service Executive		103
HSE South area	35	
HSE National	31	
HSE West area	16	
HSE Dublin Mid-Leinster area	12	
HSE Dublin North East area	9	
TUSLA: Child and Family Agency		26
Department of Employment Affairs and Social Protection		25
University College Cork		19
Department of Justice and Equality		17
Defence Forces Ireland		11
Department of Agriculture, Food and the Marine		10
Commission for Regulation of Utilities		7
Department of Housing, Planning and Local Government		6
RTÉ		6
Dún Laoghaire-Rathdown County Council		5
Fingal County Council		5
Others (bodies with fewer than 5 applications each)		191
<b>Total</b>		<b>431</b>

**Table 15: Outcome of completed reviews - 3-year comparison**

	2018		2017		2016	
Decision affirmed	168	38%	175	35%	179	42%
Decision annulled	46	10%	45	9%	36	8%
Decision varied	62	14%	68	13%	70	16%
Discontinued	96	21%	56	11%	14	3%
Settlement reached	18	4%	80	16%	88	20%
Withdrawn	52	12%	75	15%	46	11%
Invalid	1	0%	3	1%	-	-
<b>Reviews completed</b>	<b>443</b>		<b>502</b>		<b>433</b>	

**Table 16: Subject matter of review applications accepted - 3-year comparison**

	2018		2017		2016	
Refusal of access	394	92%	466	94%	403	91%
Objections by third parties to release information about them or supplied by them	15	3%	7	1%	8	2%
Amendment of records under section 9	9	2%	6	1%	13	3%
Statement of reasons under section 10	10	2%	10	2%	12	3%
Decision to charge a fee	3	1%	8	2%	4	1%
<b>Total</b>	<b>431</b>		<b>497</b>		<b>440</b>	

**Table 17: Applications accepted by type - 3-year comparison**

	2018		2017		2016	
Personal	103	24%	129	26%	146	33%
Non-personal	249	58%	278	56%	242	55%
Mixed	79	18%	90	18%	52	12%
<b>Total</b>	<b>431</b>		<b>497</b>		<b>440</b>	

**Table 18: Deemed refusals due to non-reply by public bodies**

Refusal of original and internal review decisions				
Public body				
	2018	2017	2016	
Health Service Executive	54	27	22	
	2018	2017	2016	
HSE National	21	4	6	
HSE South area	13	9	7	
HSE West area	10	5	6	
HSE Dublin North East area	6	5	2	
HSE Dublin Mid-Leinster area	4	4	1	
TUSLA: Child and Family Agency	15	29	20	
University College Cork	11	5	4	
Department of Justice and Equality	5	29	8	
Defence Forces Ireland	4	3	2	
Department of Employment Affairs and Social Protection	3	4	-	
Irish Prison Service	3	9	6	
Mater Misericordiae Hospital Limited	3	7	1	
Dún Laoghaire-Rathdown County Council	2	1	1	
Quality and Qualifications Ireland	2	1	-	
RTÉ	2	-	8	
other bodies - 1 each	17			
<b>Total 2018</b>	<b>121</b>			





# Part II

## Commissioner for Environmental Information

Introduction

Chapter 1: The year in review

Chapter 2: Court proceedings

Chapter 3: Issues arising

Chapter 4: Decisions

Chapter 5: Other matters of interest





## Introduction

I am pleased to report that in 2018 my Office recorded significant achievements in throughput, building on the gains which we made in 2017. The case figures are reported below in Chapter 1: The Year in Review. I draw attention here to some of the trends we noted in 2018. We recorded a 6% increase in the number of cases closed by my Office over the previous year and a 14% increase in the number of decisions made. More cases were closed and decisions made than in any other year since the establishment of the OCEI in 2007. I am also pleased to report that my Office recorded a decrease in the number of cases on hand at the year-end for the first time since 2012. An OIC Investigator was assigned to the OCEI during 2018, bringing the capacity of OCEI up to three and a half investigators.

Another positive development in 2018 was the marked decrease in the number of cases in which public authorities failed to make decisions, or issued late decisions, on requests resulting in a deemed refusal of access. We recorded a 57% decrease in the number of deemed refusals at first stage, a 50% decrease in the number of deemed refusals at second stage, and a 25% decrease in the number of deemed refusals at both first and second stage over the previous year.

My Office faced a number of challenges in 2018, including the complexity of the interplay between third party rights and access to environmental information and difficulties in interpreting the scope of the application of the definitions of “environmental information” and “public authority”. This is reflected in the sharp rise in the number of my decisions being appealed to the High Court. Twelve and half percent of the decisions I made in 2018 were appealed to the High Court. Appeals before the courts result in the diversion of my Office’s resources from processing the cases pending before me under article 12 of the AIE Regulations. Unfortunately, the high percentage of appeals is likely to have a negative effect on the ability of my Office to close cases over the coming year.

For further information on the operation of the AIE regime in Ireland, please visit my website at [www.ocei.ie](http://www.ocei.ie), which includes links to the previous **Annual Reports** of my Office, the **OCEI Procedures Manual**, the website of the **Department of Communications, Climate Action and Environment**, and **Directive 2003/4/EC**. All of my decisions can be found on the OCEI website on the ‘**Decisions**’ web page.

# Chapter 1: The year in review

## Key OCEI Statistics in 2018

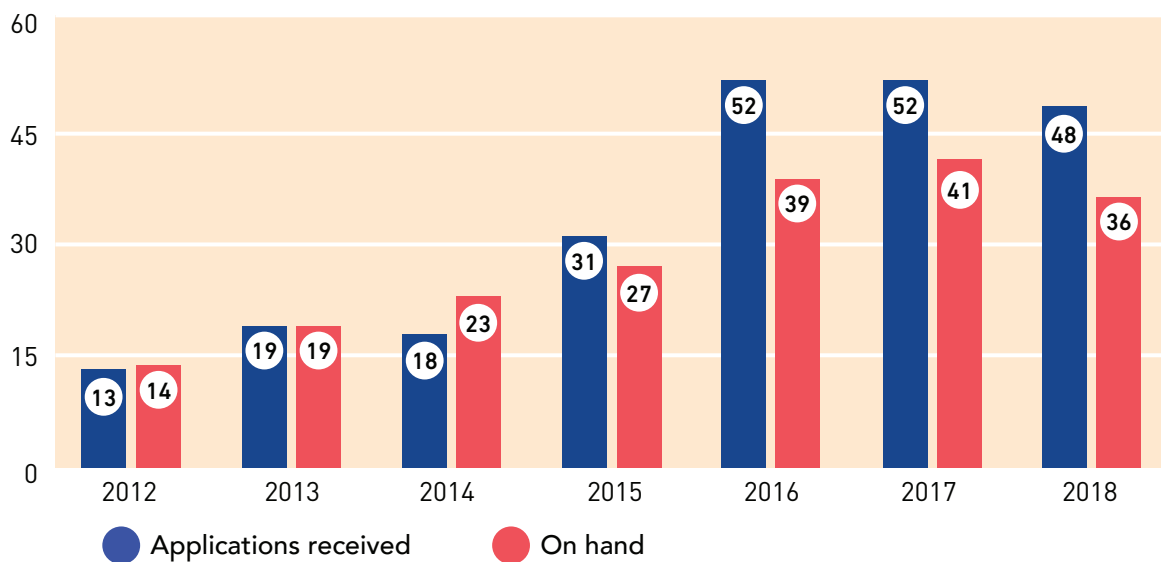
### Appeals received by the OCEI

At the start of 2018, the OCEI had 41 cases on hand. In 2018, the OCEI received 48 new appeals. In addition to the 48 new appeals, one appeal was remitted back to the OCEI by the High Court.

The number of cases on hand in the OCEI at the end of the year dropped for the first time since 2012. At 31 December 2018, the OCEI had 36 cases on hand; of these 27 were received in 2018, seven in 2017, one in 2016 and one was the case which the High Court remitted back to the OCEI. At the time of writing, I have made a new decision in the remitted appeal in Case **CEI/18/0039** Right to Know CLG and Raheenleagh Power Designated Activity Company which was again appealed to the High Court in March 2019. For more information on this case see the summary in Chapter 2: Court Proceedings. The remaining 2016 and 2017 appeals are being progressed by Investigators.

The chart below shows the number of appeals received, and the number of cases on hand (as of 31 December), each year from 2012 to 2018.

### Number of appeals received and on hand from 2012 to 2018

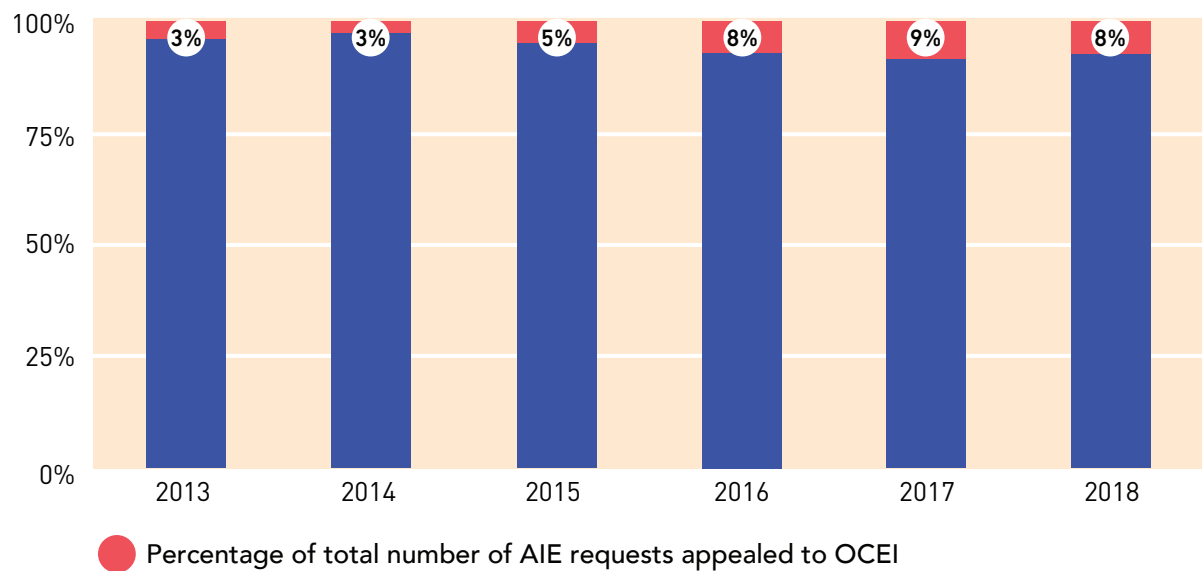


### Percentage of AIE requests appealed to the OCEI

The Department of Communications, Climate Action and Environment compile and publish National AIE Statistics each year (available on its website at [www.dccae.gov.ie](http://www.dccae.gov.ie) at its 'National AIE Statistics' webpage). I note that the percentage of the total number of AIE requests made to public authorities being appealed to the OCEI has increased steadily from 3% in 2014 to 8% in 2018. The continual increase in the percentage of AIE requests submitted to the OCEI can be

contrasted with FOI, where the percentage of applications for FOI reviews remains relatively consistent at just under 2% of the total number of FOI requests.

### Percentage of AIE requests appealed to the OCEI from 2013 to 2018



### Enquiries and statutory requests received by the OCEI

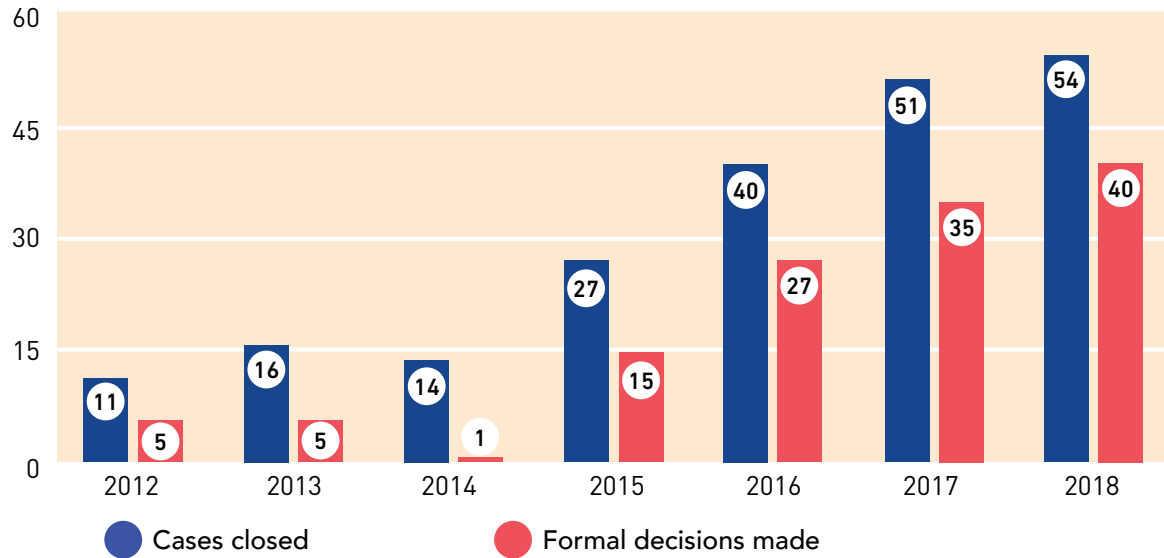
During 2018, my staff recorded 14 general enquiries about the AIE Regulations. My Office processed one request under the AIE Regulations and one request under the FOI Act 2014. It received no requests under the PSI Regulations in 2018.

### Cases closed by the OCEI

The OCEI closed 54 cases in 2018 - more cases than were closed in any other year since its establishment in 2007. I made 40 decisions in 2018; this too is more than in any other year since 2007.

The chart below shows the number of cases closed, and the number of decisions made, each year from 2012 to 2018.

## Number of cases closed and formal decisions made from 2012 to 2018



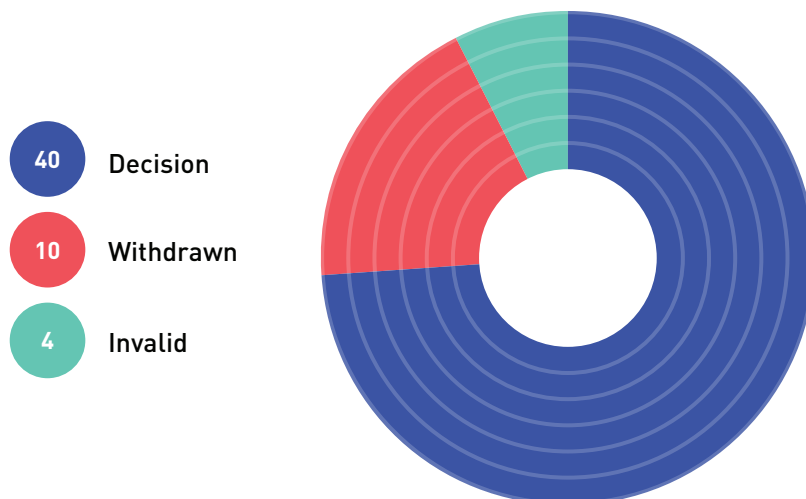
The outcome in the 54 cases closed by the OCEI in 2018 was:

- 40 cases closed by decision
- four invalid cases
- ten cases withdrawn or deemed to have been withdrawn

The average number of days taken for an appeal to be closed was 279 days in 2018. This is an increase of 17 days from 262 days in 2017.

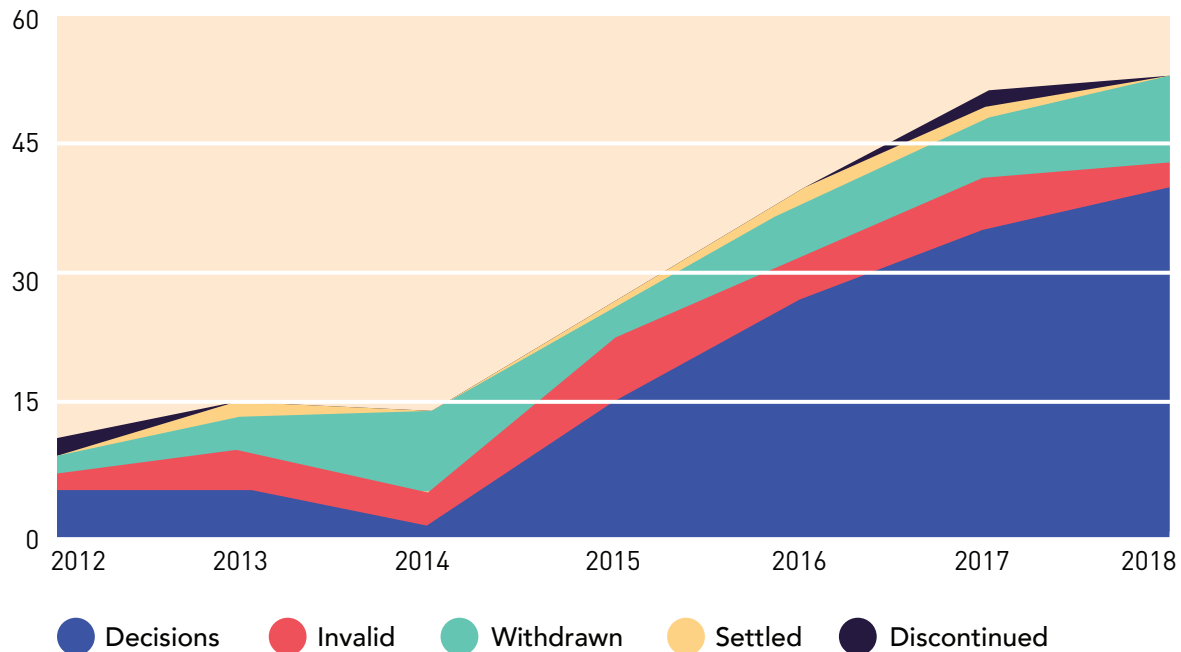
The charts below show the outcome in cases closed by the OCEI in 2018 and the outcome in cases closed by OCEI from 2012 to 2018.

## Outcome in cases closed in 2018





## Outcome in cases from 2012 to 2018



## Powers under article 15(5) of the AIE Regulations

A case closed by withdrawal can be withdrawn either:

- by the appellant or
- by me pursuant to article 15(5) of the AIE Regulations which recognises that a case may be resolvable otherwise than by way of a binding decision

Article 15(5) provides that:

“The Commissioner may deem an appeal to be withdrawn if the public authority makes the requested information available, in whole or in part, prior to a formal decision of the Commissioner under article 12(5).”

I deemed two cases to be withdrawn pursuant to article 15(5) in 2018.

The appellant in each case requested that I proceed to make a decision on issues that had arisen prior to the release of the information concerned. However, in circumstances where, following the intervention of my Office, the requested information had been released to the appellant in full, I did not consider that my Office had a further role in the matter. In my view, it would not have been an appropriate use of my Office’s limited resources to carry out a comprehensive first instance review, and make a decision, where the environmental information requested had been released in full. In the circumstances, I considered it appropriate to deem the appeals to be withdrawn under article 15(5) of the AIE Regulations, and as is my Office’s practice in such cases, to refund the appeal fee.

## Powers under article 12(6) of the AIE Regulations

Article 12(6) of the AIE Regulations provides that in the course of carrying out a review of an appeal I may:

- require a public authority to make environmental information available to me
- examine and take copies of environmental information held by a public authority
- enter any premises occupied by a public authority so as to obtain environmental information

I am pleased to report that I had no need to apply these powers in 2018.

## Deemed refusals

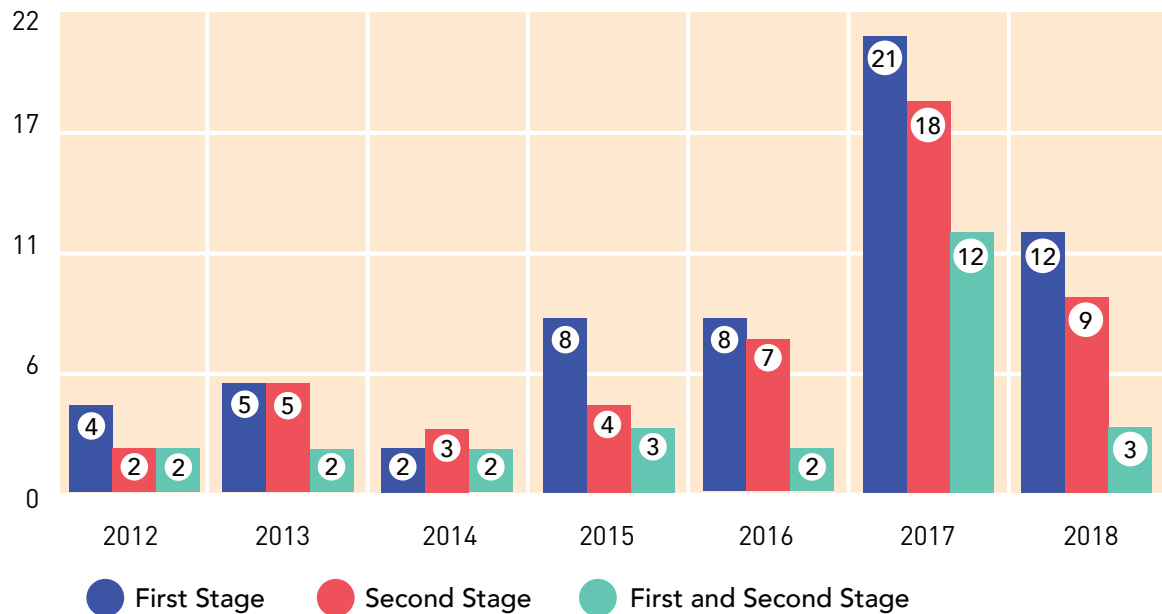
The AIE Regulations impose statutory time limits on public authorities for processing requests. Where no decision is issued or a decision is issued late, either on the original request (at first stage), or on the internal review request (at second stage), a decision refusing the request is deemed to have been made by the public authority ('deemed refusal'). Following a deemed refusal at second stage, an applicant is entitled to appeal to me for a review of the public authority's refusal within one calendar month of the date it should have received the public authority's decision.

## Decrease in the number of deemed refusals

In my 2017 Annual Report, I reported that there was a sharp rise in the number of deemed refusals recorded by my Office. I am pleased to report that we saw a marked decrease in the number of deemed refusals in cases accepted for review in 2018. We noted a 57% decrease in the number of deemed refusals at first stage over the previous year and a 50% decrease in the number of deemed refusals at second stage. We also recorded a 25% decrease in the number of deemed refusals of the same request at both the first and second stages over the previous year. While there is still a way to go in reducing further the number of deemed refusals or "non-replies", I welcome what seems to be an improvement in the compliance rate by public authorities and hope that this continues in 2019.

The chart below shows the number of deemed refusals at first stage, second stage and at both first and second stage recorded by my Office from 2012 to 2018.

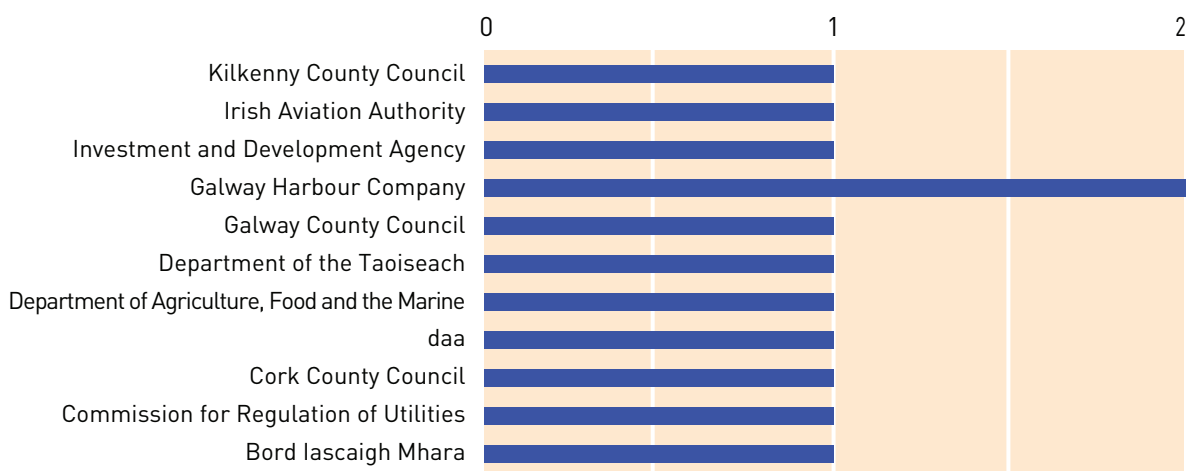
## Decisions where public authorities failed to make a decision from 2012 to 2018



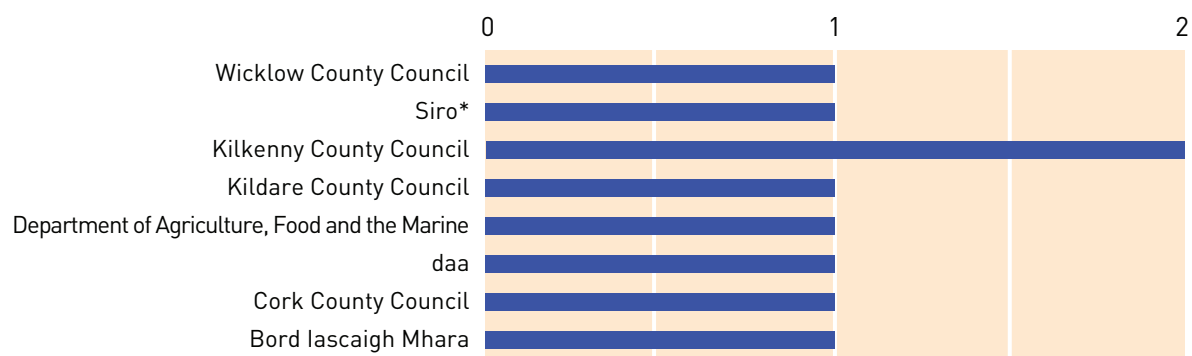
In cases accepted by my Office in 2018, the Office recorded that there were 12 deemed refusals at first stage and nine deemed refusals at second stage. We also noted that three public authorities failed to make decisions at both the first and second stages. The three public authorities were: Bord Iascaigh Mhara; Cork County Council; and daa.

The charts below show which bodies failed to make decisions at first stage, at second stage, and the number of deemed refusals by each body.

### Deemed refusals at first stage



## Deemed refusals at second stage



\* Whether the body is a public authority within the meaning of the definition “public authority” in article 3(1) of the AIE Regulations is the issue at the centre of the appeal

## Chapter 2: Court proceedings

A party to a review or any other person who is affected by a decision of my Office may appeal to the High Court on a point of law pursuant to article 13 of the AIE Regulations. A decision of the High Court can be appealed to the Court of Appeal/Supreme Court.

### Court of Appeal

One High Court decision was appealed to the Court of Appeal in 2018.

### Redmond & Anor v Commissioner for Environmental Information 2016/27 JR

In Case **CEI/14/0011** (Mr Jim Redmond and Coillte Teoranta), I found that certain information on the transfer of land did not fall within the scope of the definition of environmental information in article 3(1) of the AIE Regulations. The appellants applied to the High Court for a judicial review of my decision in March 2016. The High Court in **Redmond & anor v Commissioner for Environmental Information & anor [2017] IEHC 827** found that I was correct in concluding that the information concerning the sale of the leasehold of land was not environmental information within the meaning of the AIE Regulations. The High Court’s judgment was appealed to the Court of Appeal in March 2018. The matter is listed for hearing before the Court of Appeal on 13 January 2020.

### High Court

Five of the decisions I made in 2018 were appealed to the High Court. Three were appealed by the public authority and two were appealed by the appellant.

## Right to Know CLG v Commissioner for Environmental Information 2018/119 MCA

In Case **CEI/17/0021** (Right to Know CLG and Department of Transport, Tourism and Sport), I found that a letter and submission sent by Ibec to the Department was not environmental information within the meaning of article 3(1) of the AIE Regulations. While the submission referred to transport measures affecting or likely to affect the elements and factors of the environment, I found that the connection between the submission and those measures was too minimal to be information “on” those measures within the meaning of the definition of environmental information in article 3(1)(c) of the AIE Regulations. Right to Know CLG appealed my decision to the High Court on 11 April 2018. The matter is listed for hearing on 17 July 2019.

## Coillte Teoranta v Commissioner for Environmental Information 2018/453 MCA

In Case **CEI/17/0022** (Right to Know CLG and Coillte), I found that in the circumstances of this case the particular land sales were measures likely to affect the elements and factors of the environment within the meaning of article 3(1)(c) of the AIE Regulations. I also found that the identity of the purchasers was information “on” those sales, and therefore, environmental information under article 3(1)(c). Coillte appealed my decision to the High Court on 7 December 2018. We await the setting of a hearing date for this appeal.

## Electricity Supply Board v Commissioner for Environmental Information 2019/47 MCA

In Case **CEI/18/0003** (Lar McKenna and Electricity Supply Board), I found that a transcript of a hearing of the property arbitrator was environmental information under article 3(1)(c) of the AIE Regulations on the basis that it was information “on” the development of electricity infrastructure which is a measure or activity affecting or likely to affect the elements and factors of the environment. I went on to find that the ESB was justified in refusing access to a copy of the transcript under article 9(1)(d) of the AIE Regulations. However, in the circumstances of the case, I required the ESB to grant access to the transcript by way of inspection in situ at its office. The ESB appealed my decision to the High Court on 11 February 2019. We await the setting of a hearing date for this appeal.

## An Taoiseach v Commissioner For Environmental Information 2019/48 MCA

In Case **CEI/18/0010** (Áine Ryall and the Department of the Taoiseach) I found, among other findings, that article 9(2)(d) of the AIE Regulations applied to a memo prepared in the Department of An Taoiseach concerning proposals to limit the time frame for seeking the judicial review of planning consents for strategic infrastructure developments. I also found that the interest served by maintaining the confidentiality of the Cabinet’s internal communications outweighed the public interest in the disclosure of that information, except for small amounts of factual information in the memo, which I required the Department to release. The appeal was withdrawn on the consent of both parties on 4 March 2019.

## Right to Know CLG v Commissioner for Environmental Information 2018/216 MCA

In Case **CEI/17/0030** (Right to Know CLG and Raheenleagh Power DAC), I found that Raheenleagh Power DAC was not a public authority within the meaning of article 3(1) of the AIE Regulations. The appellant appealed my decision to the High Court on 24 May 2018. On 22 October 2018 the High Court, on the consent of all parties made an order setting aside my decision in CEI/17/0030 and remitting the matter to me for further consideration. My Office conducted the fresh review on the basis of procedures agreed with the parties. I made a new decision in Case **CEI/18/0039** (Right to Know CLG and Raheenleagh Power Designated Activity Company) on 9 January 2019 in which I found that Raheenleagh Power Designated Activity Company was not a public authority within the meaning of article 3(1) of the AIE Regulations. Right to Know CLG appealed my decision in Case CEI/18/0039 to the High Court on 7 March 2019. We await the setting of a hearing date for this appeal.

## Friends of the Irish Environment v Commissioner for Environmental Information 2017/298 MCA

I reported in last year's Annual Report that my decision in Case **CEI/16/0038** (Friends of the Irish Environment Limited and The Courts Service) was appealed to the High Court. In that case I found that the Courts Service is not a public authority within the meaning of article 3(1) of the AIE Regulations when it holds information in a judicial capacity on behalf of the Judiciary. The appeal was heard by the High Court in April 2019. The Court decided to refer a question of law to the Court of Justice of the European Union for a preliminary ruling regarding the scope of the 'when acting in a judicial capacity' exception to the definition of "public authority".

## Judicial Review

In addition to the five appeals to the High Court under article 13, there was one judicial review in 2018 of a decision made by the Department of the Taoiseach under the AIE Regulations. The Department's decision in that case was not appealed to my Office and we were not a party to the judicial review proceedings.

## Right to Know CLG v An Taoiseach & anor [2018] IEHC 371

The High Court quashed a refusal by the Department of the Taoiseach to provide access to documents showing Cabinet discussions on Ireland's greenhouse gas emissions. The Court stated that article 10(3), (4) and (5) mandates a public authority to:

- consider each request on an individual basis
- weigh the public interest served by disclosure against the interest served by refusal
- interpret the grounds for refusal on a restrictive basis having regard to the public interest served by disclosure and
- consider the possibility of providing partial access to information



It stated that a public authority may refuse access to environmental information only where the requirements of those provisions have been substantively and procedurally adhered to. The Court held that the Department's internal review decision did not comply with the requirements of the AIE Directive as it had not considered the public interest in favour of disclosure and the reasons given for the decision were inadequate.

### Communication to the Aarhus Convention Compliance Committee

I reported in my **2016 Annual Report** that Right to Know CLG made a communication to the Aarhus Convention Compliance Committee (**ACCC/C/2016/141**) in relation to aspects of Ireland's compliance with the Convention. That communication referred to the processing of cases by the OCEI. The Compliance Committee heard the communication at its 62nd meeting held from 5 to 9 November 2018. At the time of writing, I have not been provided with information relating to the Compliance Committee's findings and recommendations on the communication. Information on the communication can be found on the Compliance Committee's website at [www.unece.org/env/pp/cc/com](http://www.unece.org/env/pp/cc/com).

## Chapter 3: Issues arising

### Increase in the number of appeals to the High Court under article 13

The expanded staffing of my Office in recent years has allowed for a marked increase in the number of cases processed on an annual basis, including in the number of decisions I have made. During 2018, however, there was also a sharp rise in the number of my decisions being appealed to the High Court under article 13 of the AIE Regulations. Of the 40 decisions I made in 2018, five, or 12.5%, were appealed to the High Court. My Office spends substantial resources in responding to such litigation.

The appeals involve multiple issues, but all five include a ground of appeal alleging that I misapplied either the definition of "environmental information" or "public authority", and in one appeal both definitions, in article 3 of the AIE Regulations. The high percentage of appeals highlights the complexity that can be involved in interpreting these definitions. Four concern the application of the definition of environmental information. Interestingly, one appeal alleges that I interpreted the definition of "environmental information" too narrowly and the remaining three, in essence, allege that I interpreted the definition too broadly. One concerns a finding I made that a particular entity was not a public authority, while another concerns a finding I made that the body was a public authority. My Office welcomes the clarity that the judgments in these appeals can bring to the key definitions of "environmental information" and "public authority". However, I have concerns about the financial and staff time resources involved in responding to the Court appeals.

## Disclosure of environmental information and third party rights

During 2018, my Office received its first two third party appeals pursuant to article 12(3)(b) of the AIE Regulations which includes a right of appeal for third parties that would be adversely affected by disclosure of the environmental information. Both of these appeals were subsequently withdrawn by the third parties.

In addition to the two third party appeals my Office received pursuant to article 12(3)(b) of the AIE Regulations, I also made a number of decisions in 2018 which considered the exceptions to disclosure in the AIE Regulations which provide for the non-disclosure of environmental information where disclosure would adversely affect the rights of third parties. Some examples of those decisions are included in Chapter 4: Decisions.

## Chapter 4: Decisions

### Formal decisions

In 2018, I made 40 decisions on appeals under the AIE Regulations. In 25, or 62.5%, of my decisions I found that refusal of access to environmental information was justified in full (although not always for the same reasons provided by the public authority).

In 15, or 37.5%, of my decisions I found that refusal of access was not justified (either in part or in full). In nine of the 15 decisions, I required the public authorities to provide the appellants with access to environmental information. In 3 cases, the public authorities granted access in full to the environmental information requested during my review. In the remaining 3 cases, I found that refusal of the requests were not justified and that the public authority in question should make a fresh decision on the request. Therefore, I remitted the cases back to the public authorities to do so.

In 15, or 37.5%, of my decisions I considered the application of the definitions of “environmental information” and “public authority” in article 3 of the AIE Regulations.

In 14, or 35%, of my decisions I considered whether disclosure of the information would adversely affect the rights of third parties such as the confidentiality of personal information, commercial or industrial confidentiality and intellectual property rights.

### Decisions of interest

The following are some examples of the decisions I made in 2018. The full text of all of the decisions is available at [www.ocei.ie](http://www.ocei.ie).

#### Personal information

Article 8(a)(i) was a central issue in six of my decisions in 2018. Article 8(a)(i) provides that a public authority shall not make available environmental information where disclosure of the

information would adversely affect the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information, and where that confidentiality is otherwise protected by law.

#### **Case CEI/17/0036 (ABC & Meath County Council)**

In this case the appellant sought access to information relating to sites inspected by the Council as part of its process under the Derelict Sites Act 1990. I was satisfied that some of the withheld information was personal data, the confidentiality of which was protected by EU and national law. I found that article 8(a)(i) of the AIE Regulations applied to the personal data. I also found that the interest served by refusal outweighed the public interest in disclosure. In relation to article 10(5), I considered that identifying information for separation and release would necessitate contacting a large number of parties and considering their responses, and that in some instances it would not have been appropriate or proportionate for the Council or my Office to contact the third parties. In such circumstances, I found that separating information in the spreadsheet and the database for release pursuant to article 10(5) was not practicable.

#### **Case CEI/18/0013 (Mr X & the Department of Agriculture, Food and the Marine)**

In this case the appellant sought access to, among other information, townland details provided in certain Green, Low-Carbon, Agri-Environment Scheme (GLAS) applications. I accepted that identifying the townland of a GLAS applicant's lands would be likely to reveal the identity of the applicant in conjunction with the location of his/her lands and, in some cases, his/her home address. I recognised that there is a reasonable possibility of pooling information with other available information in a manner that would be likely to reveal the identity of the applicant. Having regard to relevant European law, I was satisfied that GLAS applicants have a reasonable expectation that any townland details provided in their applications will be treated as confidential personal information and that the confidentiality of the information is protected by law. I found that article 8(a)(i) of the AIE Regulations applied to the townland details. I also found that the interest served by refusal outweighed the public interest in disclosure. In addition, I found that article 10(5) did not apply in the circumstances of this case.

### **Commercial or industrial confidentiality**

Article 9(1)(c) was a central issue in six of my decisions in 2018. Article 9(1)(c) provides that a public authority may refuse to make environmental information available where disclosure of the information requested would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or community law to protect a legitimate economic interest.

#### **Case CEI/17/0051 (Ms X and the Department of Agriculture, Food and the Marine)**

In this case the appellant sought access to stocking rates in inspection reports for all marine and fresh water fin-fish farms for a three-year period. I found that it was necessary to show, at a minimum, that disclosure would result in some harm to the economic or commercial

interest of the party seeking protection by way of confidentiality. I did not consider that a general or speculative claim of harm to a company's competitive position was sufficient. I noted that there was a distinction between standing stock and actual production. I accepted that production data would be commercially valuable in the competitive fish farming market and that details regarding suppliers, actual supply into the market, and destinations would be key factors in determining sales prices and market share. I also accepted that the information was commercially confidential and that disclosure would be harmful to the commercial interests of the farms concerned. I found that article 9(1)(c) applied to the actual production data provided in any of the reports relating to the farms or companies which objected to the release of their details. I also found that the interest served by refusal outweighed the public interest in disclosure. However, in the circumstances of the case I did not accept that disclosure of the information in the inspection reports about the standing stocking rates would be harmful to any commercial or economic interest that is protected by law. I found that the Department was not justified in refusing access to the information about the standing stocking rates in the inspection reports and required the release of this information.

#### **Case CEI/18/0009 (Shell and Topaz Aviation Ireland Limited and daa Public Limited Company)**

In this case the appellant sought access to the contract for the construction of a fuel farm at Dublin Airport. I found that the information in the contract is environmental information. I noted that, while it is open to the public authorities to enter into contracts which include confidentiality clauses, such clauses must not purport to restrict access to environmental information. Public authorities are not free to contract out of their obligations under AIE law. The public authority also argued that its employees had a statutory duty of confidentiality under particular legislation which prohibited them from disclosing confidential information. I did not accept that the statutory prohibition invoked had any bearing on whether the public authority itself (as distinct from its employees) should or could release particular information. I found that article 9(1)(c) applied to the withheld information because its disclosure would adversely affect commercial confidentiality. I also found that the interest served by refusal outweighed the public interest in disclosure.

#### **Definitions of “environmental information” and “public authority”**

The application of the definitions of “environmental information” and “public authority” in article 3(1) of the AIE Regulations were central issues in 12 of my decisions in 2018.

Whether a body is a public authority within the meaning of the definition in article 3(1) of the AIE Regulations was a central issue in three of my decisions. Article 3(1) of the AIE Regulations defines “public authority” as:

- (a)** government or public administration, including public advisory bodies
- (b)** any natural or legal person performing public administrative functions under national law

- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b)

Article 3(2) of the AIE Regulations provide that the definition does not include: the President; the Office of the Secretary General to the President; the Council of State; any Commission for the time being lawfully exercising the powers and performing the duties of the President; or any body acting in a judicial or legislative capacity.

### **Case CEI/17/0015 (Francis Clauson and RPS Consulting Engineers Ltd (RPS))**

In this case the appellant was refused access to information relating to the noise monitoring programme of wind farms carried out by RPS on the basis that RPS is not a public authority. RPS is a private company contracted by Wexford County Council. The main issue was whether RPS is a public authority under article 3(1)(c). I considered that there was a distinction between a public authority delegating the actual provision of public services which are provided to members of the public to another body and a public authority purchasing works, goods or services through public procurement in order to meet its own operational needs. In the circumstances of the case, I was not satisfied that RPS in carrying out the noise monitoring programme provided public services. I found that RPS is not a public authority under article 3(1) of the AIE Regulations.

### **Case CEI/17/0016 (Lar McKenna and the Property Arbitrator)**

In this case the appellant appealed the failure of the Property Arbitrator to process his request which was previously appealed to me. In Case **CEI/15/0026** (Lar McKenna and Statutory Property Arbitrator) I found that the Property Arbitrator is a public authority within the meaning of article 3 of the AIE Regulations and I stated my expectation that he would proceed to process the AIE request. My earlier decision found that the Property Arbitrator is not excluded from the definition because he is not obliged to give reasons for his decisions. The Property Arbitrator submitted in this appeal that, contrary to my earlier finding, he is obliged to give reasons for his award decisions by virtue of the Arbitration Act 2010, which incorporates the UNCITRAL Model Law into Irish law. In the circumstances, I found that the Property Arbitrator acts in a judicial capacity when performing his statutory function within the meaning of article 3(2) and, therefore, is not a public authority within the meaning of article 3 of the AIE Regulations, when so acting.

## Chapter 5: Other matters of interest in 2018

### Amendment to the AIE Regulations

On 27 July 2018 the Minister for Communications, Climate Action and Environment signed S.I. No. 309 of 2018 European Communities (Access To Information On The Environment) (Amendment) Regulations 2018. S.I. No 309 of 2018 substituted article 3(2) with the following:

“Notwithstanding anything in sub-article (1), in these Regulations “public authority” does not include—

- (a) the President,
- (b) the Office of the Secretary General to the President,
- (c) the Council of State,
- (d) any Commission for the time being lawfully exercising the powers and performing the duties of the President, or
- (e) any body when acting in a judicial or legislative capacity.”

### Review of OCEI procedures

My Office is reviewing our processes to ensure that cases are examined, accepted, allocated and progressed in the most efficient, timely and thorough way whilst affording fair procedures to all parties concerned.

### Engagement with the Department of Communications, Climate Action and Environment

In March 2018, the Department ran an AIE Awareness and Training Event. An Investigator from my Office made a presentation which provided an overview of the Office, our role under the AIE Regulations, and guidance for AIE decision-makers on processing and making decisions on AIE requests. As in recent years, the training provided clear and useful information to public authority staff on the AIE Regulations, and I would like to thank the Department for its continued work in this regard.

In last year’s Annual Report I reported that my Office was engaging with the Department on its review of the ‘Guidance for Public Authorities and others on implementation of the Regulations’ (May 2013) published by the Minister pursuant to article 14 of the AIE Regulations. My Office provided observations on a draft version of the proposed revised guidance in early 2018. It is my understanding that the Department intends to publish the revised guidance in 2019.



In addition to revising the Minister's Guidance on the AIE Regulations, the Department also proposes to undertake a review of the AIE Regulations, which is to include a public consultation. My predecessor and I have at various times raised issues that my Office has encountered in carrying out our statutory functions under the AIE Regulations. In doing so we have suggested possible amendments to, and clarifications of, the Regulations to address such matters. My Office wrote to the Department in 2018 reiterating the issues which we consider that the Department should address when it is revising the AIE Regulations.

I look forward to further engagement with the Department in 2019 on the Minister's revised Guidance on the AIE Regulations, on its review of the AIE Regulations and on any other issues of mutual concern which may arise.

# Appendices





## Appendix I

### Statutory Certificates issued by Ministers in 2018

An Roinn Dlí agus Cirt  
agus Comhionannais  
Department of Justice  
and Equality

Oifig an Ard-Rúnaí | Office of the Secretary General

Mr. Stephen Rafferty  
Senior Investigator  
Office of the Information Commissioner  
18 Lower Leeson Street  
Dublin 2  
D02 HE97



**Re: Notification under section 34 of the Freedom of Information Act, 2014**

Dear Mr. Rafferty,

I refer to your correspondence regarding the certificates issued by the Minister for Justice and Equality under section 34 of the Freedom of Information Act 2014.

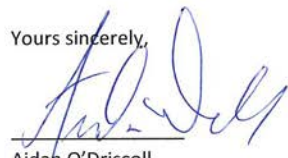
The Minister renewed five of these certificates in 2018 (on 13 February and 25 September) under Section 34 of the Freedom of Information Act 2014 by reference to the records that are exempted under Section 32 and Section 33.

A further cert, in respect of the Departments Fixed Asset Register was also reviewed in November 2018 and a decision was taken by the Department to lapse this certificate as the request could be dealt with using the exemptions under the Act.

The Department now has eight certificates. The remainder of these are due to be reviewed in 2019.

Please find attached copy of all the certificates held by the Department. The certs were reviewed by the Taoiseach and Ministers on 29 January 2019.


Yours sincerely,

  
Aidan O'Driscoll  
Secretary General

22 February, 2019

## Appendix II

### Review under section 34(7) of Ministerial Certificates issued



Roinn an Taoisigh  
Department of the Taoiseach

08 February 2019.

Mr. Peter Tyndall,  
Information Commissioner,  
Office of the Information Commissioner,  
18 Lower Leeson Street,  
Dublin 2,  
D02 HE97.

**Ombudsman and  
Information Commissioner**  
**13 FEB 2019**  
**Received**

**Review of Certificates issued under Section 34 of the  
Freedom of Information Act, 2014**

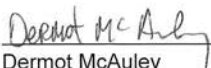
Dear Commissioner,


I wish to confirm that the Taoiseach, the Minister for Finance and Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation carried out a review for the period ended 31 December 2018, on 29 January 2019.

Fifteen Certificates were reviewed, nine of which were issued by the Minister for Justice and Equality and six by the Minister for Foreign Affairs and Trade.


The Taoiseach, the Minister for Finance and Public Expenditure and Reform and the Minister for Business, Enterprise and Innovation are satisfied that it is not necessary to request revocation of any of the fifteen certificates which were the subject of this review - copies of the forms signed by the reviewers to that effect are enclosed.

Yours sincerely,

  
Dermot McAuley



Tithe an Rialtais, Baile Átha Cliath 2.  
Government Buildings, Dublin 2.

 Anas pháirtíocháil ar pháipéar athchíreáilte  
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